MONTANA

CODE

ANNOTATED

1991

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CONTENTS

STATE LAW LIBRARY
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Volume 1
Preface
CONSTITUTION

Titles

1. General Laws and Definitions
2. Government Structure and Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2

Titles

7. Local Government
8 and 9. Reserved

Volume 3

Titles

10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved
15. Taxation
16. Alcohol and Tobacco
17. State Finance
18. Public Contracts

Volume 4

Titles

19. Public Retirement Systems
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved
25. Civil Procedure
26. Evidence

Volume 5

Titles

27. Civil Liability, Remedies, and Limitations
28. Contracts and Other Obligations
29. Reserved
30. Trade and Commerce
31. Credit Transactions and Relationships
32. Financial Institutions

Volume 6

Titles

33. Insurance and Insurance Companies
34. Reserved
35. Corporations, Partnerships, and Associations
36. Reserved

Volume 7

Titles

37. Professions and Occupations
38. Reserved
39. Labor
40. Family Law
41. Minors
42 and 43. Reserved

Volume 8

Titles

44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights
50. Health and Safety
51. Reserved
52. Family Services
53. Social Services and Institutions
54-59. Reserved

Volume 9

Titles

60. Highways and Transportation
61. Motor Vehicles
62-66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers
70. Property
71. Mortgages, Pledges, and Liens

Volume 10

Titles

72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved

Volume 11

Titles

80. Agriculture
81. Livestock
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91-99. Reserved

INDEX

TITLE 60

HIGHWAYS AND TRANSPORTATION

Ch.

1. Highway Code.
2. State Administration.
3. Distribution and Apportionment of Highway Funds.
4. Acquisition and Disposition of Property.
5. Control of Access and Information Signs.
6. Highway Encroachments.
7. Livestock on Highways.
   Chapters 8 through 10 reserved.
11. Rail Transportation.
   Chapters 12 through 20 reserved.
21. Public Transportation.

CHAPTER 1

HIGHWAY CODE

Part 1 — General Provisions

60-1-101. Legislative findings.
60-1-102. Legislative policy and intent.
60-1-103. General definitions.
60-1-104. Good Roads Day.

Part 2 — Classification of Highways

60-1-201. Classification — highways and roads.
60-1-202. Lewis and Clark highway.
60-1-203. Veterans memorial highway.
60-1-204. Maureen and Mike Mansfield heritage route.

Chapter Cross-References

General obligation highway bonds, Title 17, ch. 5, part 5.

Traffic education, Title 20, ch. 7, part 5.

Conditional granting of use of highways to nonresidents, 25-3-601.

Highway Patrol, Title 44, ch. 1.

Motor Vehicles, Title 61.

Traffic regulation, Title 61, ch. 8.

Motor carriers — regulation, Title 69, ch. 12.

Railroad highway crossing, Title 69, ch. 14, part 6.

Part 1

General Provisions

Part Cross-References
Roadblocks, Title 46, ch. 5, part 5.
Highway safety, Title 61, ch. 2.

60-1-101. Legislative findings. The legislature recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and declares that:

(1) inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state;

(2) the problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent;

(3) adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state;

(4) providing adequate highway facilities is a proper public use and purpose, and this title is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965; R.C.M. 1947, 32-2201; amd. Sec. 1, Ch. 23, L. 1979.

60-1-102. Legislative policy and intent. Consistent with the foregoing determinations and declarations, the legislature intends:

(1) to place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain, and protect the highway facilities of this state for present as well as for future use;

(2) to make the department of transportation custodian of the federal-aid and state highways and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction;

(3) that the state shall have integrated systems of highways, roads, and streets and that the department of transportation, the counties, and municipalities assist and cooperate with each other to that end;

(4) to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965; amd. Sec. 68, Ch. 316, L. 1974; R.C.M. 1947, 32-2202; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments
1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Municipal contracts and franchises, Title 7, ch. 5, part 43.

General provisions related to county roads, Title 7, ch. 14, part 21.

Highway Patrol, Title 44, ch. 1.

Authority of Department of Transportation, 61-3-713.

Planning of roads and streets by planning boards, 76-1-106.

Master plan — planning board, 76-1-601.

Exemption from surveying and platting requirements for lands acquired for state highways, 76-3-209.

60-1-103. General definitions. Subject to additional definitions contained in this title which are applicable to specific chapters or sections and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment" means cessation of use of right-of-way (easement) or activity thereon with no intention to reclaim or use again (sometimes called vacation).

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(3) "Commission" means the highway commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain.

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take private property for public use.

(12) "Federal-aid highway" means any public highway which is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named hereafter and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether they appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures which have been or shall be:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision thereof;

(b) dedicated to public use;

(c) acquired by eminent domain;

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(23) "Right-of-way" is a general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(24) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

History: En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; R.C.M. 1947, 32-2203(part); amd. Sec. 2, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways and reference to Director of Transportation for reference to Director of Highways. Amendment effective July 1, 1991.

Cross-References

Powers and duties of Governor, 2-15-201.

60-1-104. Good Roads Day. The third Tuesday in June is hereby designated "Good Roads Day". The governor may annually by public proclamation request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4401.

Part 2

Classification of Highways

Part Cross-References

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

60-1-201. Classification — highways and roads. (1) Public highways of this state are classified as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways which are not designated, selected, or established by the commission or constructed or maintained by the department are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965; amd. Sec. 70, Ch. 316, L. 1974; R.C.M. 1947, 32-2301; amd. Sec. 3, Ch. 23, L. 1979.

Cross-References

General provisions related to county roads, Title 7, ch. 14, part 21.

General provisions related to municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Roads, Title 61, ch. 1, part 2.

60-1-202. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes:

(1) from the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U.S. highway 93 at Lolo;

(2) thence north from Lolo on U.S. highway 93 to Missoula;

(3) thence east from Missoula on U.S. highways 12 and 10 to Garrison;

(4) thence east from Garrison on U.S. highway 12 through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965; R.C.M. 1947, 32-2302.

60-1-203. Veterans memorial highway. There is established the veterans memorial highway composed of the existing U.S. interstate highway 15 from the Montana-Idaho border at Monida Pass to the international boundary at Sweetgrass.

History: En. Sec. 1, Ch. 319, L. 1987.

60-1-204. Maureen and Mike Mansfield heritage route. The portion of U.S. interstate highway 15 between Butte and Great Falls is established as the Maureen and Mike Mansfield heritage route.

History: En. Sec. 1, Ch. 643, L. 1989.

CHAPTER 2

STATE ADMINISTRATION

Part 1 — Highway Commission

60-2-101. Repealed.
60-2-102. Repealed.
60-2-103. Rules.
60-2-104. Designation of federal-aid highways.
60-2-105. Designation of highways in state maintenance system.
60-2-106. Designation of highways not located entirely within the state.
60-2-107. Abandonment of highways.
60-2-108 and 60-2-109 reserved.
60-2-110. Setting priorities and selecting projects.
60-2-111. Letting of contracts on state and federal-aid highways.
60-2-112. Competitive bidding.
60-2-113. Bidder's security — contractor's bond.
60-2-114 through 60-2-120 reserved.
60-2-121. Authority of commission to prioritize expenditures on railroad crossings — public hearing.

Part 2 — Department of Transportation General Powers and Duties

60-2-201. General powers of department.
60-2-202. Duties of department.
60-2-203. Maintenance responsibility.
60-2-204. Maintenance agreements with local governments.
60-2-205. Powers of department with respect to highways not located entirely within the state.
60-2-206. Compilation of statistics — investigation — consultation.
60-2-207. Agreements concerning analysis of effects of weight on highways.
60-2-208. Seeding along highways.
60-2-209. Description and plan of new highway or reconstructed or controlled-access facility.
60-2-210. Payment of construction and maintenance costs within municipalities.
60-2-211. Bypassing of municipalities — consent of municipal governing body.
60-2-212 reserved.
60-2-213. Interstate emergency maintenance service agreements.
60-2-214 and 60-2-215 reserved.
60-2-216. Vocational-technical center signs — location — specifications.
60-2-217. Signs identifying mountain ranges — scenic loop highways — costs — responsibility of department.
60-2-218. Welcome and farewell signs — design, erection, maintenance — completion date — exceptions — use of existing signs.
60-2-219. Department authorized to accept and expend funds for welcome and farewell signs.
60-2-220 reserved.
60-2-221. Renumbered 60-2-241 by Code Commissioner, 1989.
60-2-222. Indian historical markers.
60-2-223. Marker location and design — consultation with tribes required.
60-2-224. Historical society to pay cost of markers from allocation under lodging facility tax.
60-2-225 through 60-2-240 reserved.
60-2-241. Prohibited materials.

Part 3 — Ports of Entry, Checking Stations, and Interstate Cooperation

60-2-301. Ports of entry and checking stations authorized.
60-2-302. Repealed.

60-2-303. Cooperation in use of ports of entry and checking stations.
60-2-304 through 60-2-310 reserved.
60-2-311. Interstate agreements for tax and fee collection and port operation.

Chapter Cross-References

General obligation highway bonds, Title 17, ch. 5, part 5.

Highway revenue bonds, Title 17, ch. 5, part 9.

Highway Patrol retirement, Title 19, ch. 6.

Conditional granting of use of highways to nonresidents, 25-3-601.

No road construction through cemetery, 35-20-217.

Public thoroughfare or utility through dedicated property prohibited — consent, 35-21-409.

Highway Patrol, Title 44, ch. 1.

Part 1

Highway Commission

Part Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

Highway Commission — membership and districts, 2-15-2502.

Public contractor's fees and tax, Title 15, ch. 50.

Establishment of special speed limits, 61-8-309, 61-8-310, 61-8-313.

60-2-101. Repealed. Sec. 1, Ch. 247, L. 1985.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974; R.C.M. 1947, 32-2404(2).

60-2-102. Repealed. Sec. 1, Ch. 234, L. 1989.

History: En. Sec. 4-104, Ch. 197, L. 1965; amd. Sec. 73, Ch. 316, L. 1974; R.C.M. 1947, 32-2404(1).

60-2-103. Rules. The commission may adopt rules necessary for its government.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974; R.C.M. 1947, 32-2409(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

60-2-104. Designation of federal-aid highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall, in cooperation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on those highways, the continuity of the highways in relation to the state highway systems as they may connect or tie into a unified system of federal-aid highways, and the taxable valuations which are affected by those public highways.

(3) The commission shall, in cooperation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974; R.C.M. 1947, 32-2407(part).

Cross-References

Authority to contract for road work when federal funds involved, 7-14-4108.

Hunting rights on adjoining federal wildlife preserve — distance from highways, 87-1-227.

60-2-105. Designation of highways in state maintenance system. The commission shall designate the following public highways in the state to be included in the state maintenance system:

(1) the federal-aid interstate system as defined by 60-1-103(14);

(2) the federal-aid primary system as defined by 60-1-103(15) and urban extensions thereto;

(3) those portions of the federal-aid secondary system defined by 60-1-103(16) and urban extensions thereto as are designated by the commission;

(4) other public highways or portions thereof not included within the systems above named which are designated by the commission.

History: En. 32-2407.1 by Sec. 1, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.1.

Cross-References

Duties of County Surveyor related to roads and bridges in certain counties, 7-4-2812 through 7-4-2815.

60-2-106. Designation of highways not located entirely within the state. The commission may designate highways subject to improvement under the provisions of Title 23, U.S.C., even though those highways are not located entirely and continuously within the boundaries of the state. The designations shall meet the following conditions:

(1) the highway is on an approved federal-aid route and eligible for improvement under Title 23, U.S.C.;

(2) the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable;

(3) the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

History: En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974; R.C.M. 1947, 32-2408(1); amd. Sec. 4, Ch. 23, L. 1979.

Cross-References

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

60-2-107. Abandonment of highways. The commission may abandon highways on the federal-aid systems and state highways.

History: En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977; R.C.M. 1947, 32-2406(part).

Cross-References

Costs of discontinuation of trafficway, 7-14-104.

Abandonment or vacation of county roads, 7-14-2615.

Abandonment or vacation of federal-aid or state highways, 60-4-208.

60-2-108 and 60-2-109 reserved.

60-2-110. Setting priorities and selecting projects. The commission shall establish priorities and select and designate segments for construction and reconstruction on federal-aid interstate and federal-aid primary and state highway systems. The commission shall use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice.

History: En. Sec. 1, Ch. 30, L. 1983.

Cross-References

General powers of Department of Transportation, 60-2-201.

60-2-111. Letting of contracts on state and federal-aid highways. (1) Except as provided in subsection (2), all contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under 7-14-4108 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government.

History: En. Sec. 9-101, Ch. 197, L. 1965; R.C.M. 1947, 32-4101; amd. Sec. 1, Ch. 88, L. 1983.

Cross-References

County contracts, Title 7, ch. 5, part 23.

Public contracts generally, Title 18, ch. 1.

Construction contracts, Title 18, ch. 2.

Standard prevailing rate of wages, 18-2-402.

Contracts generally, Title 28, ch. 2 and 3.

Public contractors, Title 37, ch. 71.

Nondiscrimination provision in all public contracts, 49-3-207.

60-2-112. Competitive bidding. (1) When the estimated cost of any work exceeds $10,000, the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission must specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total cost of

labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

History: En. Sec. 9-102, Ch. 197, L. 1965; amd. Sec. l, Ch. 278, L. 1974; amd. Sec. 150, Ch. 316, L. 1974; R.C.M. 1947, 32-4102; amd. Sec. 5, Ch. 23, L. 1979; amd. Sec. 1, Ch. 598, L. 1983; amd. Sec. 2, Ch. 87, L. 1985.

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

60-2-113. Bidder's security — contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of Title 18, chapter 1, part 2.

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in Title 18, chapter 2, part 2. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965; R.C.M. 1947, 32-4103.

Cross-References

Contractors' bonds for wages and benefits, Title 39, ch. 3, part 7.

60-2-114 through 60-2-120 reserved.

60-2-121. Authority of commission to prioritize expenditures on railroad crossings — public hearing. (1) The commission shall adopt rules to prioritize the expenditure of funds on railroad crossings.

(2) If requested by the board of county commissioners of any county, the commission shall conduct a public hearing in the affected county on the priority assigned any railroad crossing, and based on the evidence presented at the public hearing, the commission may revise the priority of the railroad crossing.

History: En. Sec. 1, Ch. 359, L. 1989.

Cross-References

Railroad highway crossings, Title 69, ch. 14, part 6.

Part 2

Department of Transportation General Powers and Duties

Part Cross-References

Department of Transportation, Title 2, ch. 15, part 25.

Motor Pool Division — vehicle regulation, Title 2, ch. 17, part 4.

Department of Transportation — grievance procedures, Title 2, ch. 18, part 10.

Cooperative agreements with district weed boards, 7-22-2151.

National defense highway plans, 10-3-107.

Connecting roads between state highways and state parks, 23-1-104.

Operation of snowmobiles on public roads and streets, 23-2-631, 23-2-632.

Enforcement of provisions relating to snowmobiles, 23-2-641, 23-2-642.

Highway safety, Title 61, ch. 2.

Authority for reciprocity agreements, provisions, reciprocity standards, 61-3-714.

Traffic regulation, Title 61, ch. 8.

Shooting from or across road or highway right-of-way prohibited, 61-8-369.

Size, weight, load — motor vehicles, Title 61, ch. 10.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

Aircraft landings and takeoffs on public roads, 67-1-204.

Assistance in airport road construction — Department of Transportation, 67-10-211.

Regulation of carriers, Title 69, ch. 11.

Motor carriers, Title 69, ch. 12.

Outdoor advertising, Title 75, ch. 15, part 1.

Disabled person — hunting from vehicle allowed — exception, 87-2-803.

Unlawful to kill wildlife from vehicle on highway, 87-3-101.

Restrictions on use of motor vehicles while hunting, 87-3-125.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

Coal area highway reconstruction program, 90-6-210.

60-2-201. General powers of department. (1) The department may plan, lay out, alter, construct, reconstruct, improve, repair, and maintain highways on the federal-aid systems and state highways according to priorities established by and on projects selected and designated by the commission.

(2) The department may cooperate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets.

(3) The department may review and approve projects for the installation of public works on state highway rights-of-way and authorize a county or municipality to let contracts related to such improvements.

(4) The department shall adopt necessary rules for the construction, repair, maintenance, and marking of state highways and bridges.

History: (1) thru (3)En. Sec. 4-106, Ch. 197, L. 1965; amd. Sec. 74, Ch. 316, L. 1974; amd. Sec. 1, Ch. 283, L. 1977; Sec. 32-2406, R.C.M. 1947; (4)En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967; amd. Sec. 75, Ch. 316, L. 1974; Sec. 32-2407, R.C.M. 1947; R.C.M. 1947, 32-2406(part), 32-2407(part); amd. Sec. 1, Ch. 324, L. 1979; amd. Sec. 2, Ch. 30, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Highway Commission, 2-15-2502.

State-owned motor vehicles, Title 2, ch. 17, part 4.

State seal on motor vehicles, 2-17-402.

Local government — special improvement districts, Title 7, ch. 12, parts 41 through 44.

General provisions related to municipal utility services, Title 7, ch. 13, parts 41 through 44.

General provisions related to county roads, Title 7, ch. 14, parts 21 through 26.

General provisions related to municipal trafficways and public grounds, Title 7, ch. 14, parts 41 through 44.

Disposition of highway equipment by bid, 18-6-103.

Department of Transportation to sign all state highways, 61-8-203.

Erection of signs, 61-8-704.

Penalty — injury to or removal of sign or marker a misdemeanor, 61-8-713.

When authorities may restrict right to use roadway, 61-10-128.

Outdoor Advertising Act — Department of Transportation, Title 75, ch. 15, part 1.

60-2-202. Duties of department. The department shall:

(1) maintain and preserve the records of the commission in its office at Helena; and

(2) file and preserve copies of all plans, specifications, contracts, estimates, and official acts taken by it or by the commission.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969; amd. Sec. 77, Ch. 316, L. 1974; R.C.M. 1947, 32-2409(2); amd. Sec. 12, Ch. 140, L. 1985; amd. Sec. 2, Ch. 82, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (3) that read: "(3) prepare and submit to the governor on or before the 15th day of each month a report of work constructed, under construction, and proposed for construction; the progress made during the preceding month; and recommendations for improvements and their estimated costs"; and made minor change in style. Amendment effective March 18, 1991.

Cross-References

Powers and duties of Governor, 2-15-201.

Highway Commission, 2-15-2502.

Transfer of highway rights-of-way and maintenance records from Department of State Lands, 77-1-702.

Department to file ownership records of land held for administrative purposes with Department of State Lands, 77-1-706.

60-2-203. Maintenance responsibility. The department shall have the responsibility for maintenance of all public highways or portions thereof that it maintained on July 1, 1976.

History: En. 32-2402.2 by Sec. 2, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.2.

Cross-References

Duties of County Surveyor related to roads and bridges in certain counties, 7-4-2812.

Duties of County Commissioners concerning county roads, 7-14-2103.

Maintenance of trafficways, 7-14-4107.

Expenditure from highway reconstruction trust account permitted, 60-3-217, 60-3-218.

Maintenance of frontage roads, 60-5-108.

Unlawful disposal of dead animals, 75-10-213.

Penalty for unlawful dumping of dead animals, 75-10-233.

60-2-204. Maintenance agreements with local governments. The department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon such terms and conditions as may be agreed upon, provided that, in the case of highways in the state maintenance system as defined in 60-2-105 and 60-2-203:

(1) the department shall bear the entire cost of maintenance, operation, and construction work performed by the local governing body pursuant to these agreements; and

(2) the department is responsible for the entire cost of placement and maintenance of all traffic control devices involved in these agreements required by 61-8-203.

History: En. 32-2402.3 by Sec. 3, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.3; amd. Sec. 1, Ch. 411, L. 1979.

Cross-References

Duties of County Surveyor related to roads and bridges in certain counties, 7-4-2812.

Duties of County Commissioners concerning county roads, 7-14-2103.

Maintenance of trafficways, 7-14-4107.

60-2-205. Powers of department with respect to highways not located entirely within the state. The department may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of highways designated under 60-2-106. It may do all things necessary or required to carry out fully the cooperation contemplated under Title 23, U.S.C., with regard thereto.

History: **En. Sec. 4-108, Ch. 197, L. 1965; amd. Sec. 76, Ch. 316, L. 1974; R.C.M. 1947, 32-2408(2); amd. Sec. 6, Ch. 23, L. 1979.**

60-2-206. Compilation of statistics — investigation — consultation. (1) The department shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The department may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The department shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. It shall at all times lend its aid in promoting highway improvement throughout the state.

History: **En. Sec. 4-110, Ch. 197, L. 1965; amd. Sec. 78, Ch. 316, L. 1974; R.C.M. 1947, 32-2410.**

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

60-2-207. Agreements concerning analysis of effects of weight on highways. (1) The department may contract with the United States or any state or group of states or agencies thereof or any nonprofit association, on a joint or cooperative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: **En. Sec. 4-111, Ch. 197, L. 1965; amd. Sec. 79, Ch. 316, L. 1974; R.C.M. 1947, 32-2411.**

Cross-References

Motor vehicles — size — weight — load, Title 61, ch. 10.

Coal area highway reconstruction program, 90-6-210.

60-2-208. Seeding along highways. (1) After a federal-aid or state highway is constructed, the department shall seed borrow pits, slopes, and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The department shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices, and grass species from the Montana extension service, the experiment station, and the soil conservation service.

(3) After a right-of-way in open range has been fenced pursuant to 60-7-103, the department may seed the land within the fence to a grass which may be cropped for hay and may lease such lands or sell the right to take such hay to qualified persons.

History: En. Sec. 4-112, Ch. 197, L. 1965; amd. Sec. 6, Ch. 255, L. 1974; amd. Sec. 80, Ch. 316, L. 1974; R.C.M. 1947, 32-2412.

Cross-References

Montana grain and seed laboratory, 20-25-229.

Forest and conservation experiment station, 20-25-241 through 20-25-243.

Administration of certain islands and abandoned riverbeds, 77-1-103.

60-2-209. Description and plan of new highway or reconstructed or controlled-access facility. (1) Whenever the department establishes the location, width, and lines of any new, reconstructed, or proposed highway or the commission designates a road, street, or highway as a controlled-access facility, the department shall make a description and plan showing the centerline and the established width, the immediate boundary lines of all private property over, across, or through which the highway passes, the name of the owner of the property, the boundaries of that part of the private ownership included within the right-of-way of the highway, the parcel number assigned to that part of each ownership included within the highway right-of-way, together with the project number under which the highway is or is proposed to be constructed or reconstructed.

(2) Reference to the project number, parcel number, and section or quarter section, tract, block, or lot from which the same has been subdivided is a valid description of the parcel in all deeds given to or received from the state in which a parcel is transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969; amd. Sec. 81, Ch. 316, L. 1974; R.C.M. 1947, 32-2413.

Cross-References

General power of Department to acquire interests in property, 60-4-102.

Exemption from surveying and platting requirements for lands acquired for state highways, 76-3-209.

60-2-210. Payment of construction and maintenance costs within municipalities. The department of transportation shall pay the entire costs of construction of streets, curbs, gutters, and sidewalks and maintenance of streets, highways, curbs, and gutters which:

(1) are state highway routes; and

(2) are within incorporated municipalities.

History: En. Sec. 1, Ch. 210, L. 1965; amd. Sec. 40, Ch. 316, L. 1974; R.C.M. 1947, 32-1627; amd. Sec. 1, Ch. 153, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General provisions related to municipal trafficways and public grounds, Title 7, ch. 14, part 41.

60-2-211. Bypassing of municipalities — consent of municipal governing body. (1) The department may not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) are not part of the national system of interstate highways built under the National Defense Highway Act; and

(b) divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The department shall notify the governing body of the municipality by certified mail that it proposes to bypass the municipality. A contract may not be let or work commenced until the governing body notifies the department of its consent or until the elapse of 60 days after the notice has been sent by the department to the municipality, whichever first occurs. The failure of the municipality to act and notify the department of its action within the 60-day period is implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the department has been notified of the consent.

History: En. Sec. 2, Ch. 210, L. 1965; amd. Sec. 41, Ch. 316, L. 1974; R.C.M. 1947, 32-1628.

Cross-References

Municipalities — "governing body" defined, 7-1-4121.

60-2-212 reserved.

60-2-213. Interstate emergency maintenance service agreements. (1) The department may negotiate and enter into a bilateral agreement with an adjoining state or province to provide for the exchange of emergency maintenance services on highways located in Montana or the adjoining state or province.

(2) An agreement authorized under subsection (1) must be confined to emergency situations. The department is prohibited from entering into agreements with adjoining states or provinces that would result in an adjoining state or province performing routine maintenance on highways located in Montana.

History: En. Sec. 1, Ch. 167, L. 1991.

60-2-214 and 60-2-215 reserved.

60-2-216. Vocational-technical center signs — location — specifications. (1) The department shall design, construct, and erect appropriate signs indicating access routes to each vocational-technical center designated in 20-16-106.

(2) The department shall locate each sign at the intersection or exit on the federal-aid highway system offering the nearest or the most practicable route to the vocational-technical center concerned.

(3) The style, size, and color of the signs must be consistent with the specifications required for other informational or directional signs installed on the federal-aid highway system.

History: En. Sec. 1, Ch. 423, L. 1985; amd. Sec. 34, Ch. 658, L. 1987.

Cross-References

Department of Transportation to sign all state highways, 61-8-203.

Display of unauthorized signs, signals, or markings, 61-8-210.

60-2-217. Signs identifying mountain ranges — scenic loop highways — costs — responsibility of department. (1) Subject to the provisions of federal law, the department shall design and erect at relevant locations signs, clearly visible to traffic, identifying:

(a) each prominent mountain range that is visible to an occupant of a vehicle traveling on a primary or interstate highway in Montana; and

(b) the junctions with primary or interstate highways in Montana of scenic highways designated under authority of the commission or the department. The signs must mark where the scenic loop leaves and returns to the primary or interstate highway.

(2) (a) The department may not pay the cost of the manufacture and erection of the signs provided for in subsection (1)(b) out of funds appropriated to the department.

(b) Scenic loop highway signs are intended to provide tourist information, and the department's responsibility for the construction, maintenance, or traffic operation of the highway so signed is not affected by the signs.

(c) Erection of scenic loop highway signs does not create a scenic highway.

History: En. Sec. 1, Ch. 325, L. 1987; amd. Sec. 1, Ch. 144, L. 1989.

60-2-218. Welcome and farewell signs — design, erection, maintenance — completion date — exceptions — use of existing signs. (1) (a) The department shall:

(i) design, erect, and maintain welcome and farewell signs within Montana at the nearest practical location to the border of the state where each federal-aid interstate highway, except interstate 90 at the Montana-Idaho border in Mineral County, and each federal-aid primary highway enters or leaves Montana;

(ii) select locations for the signs consistent with the requirements for public safety and maximum visibility and with all applicable provisions of federal law; and

(iii) subject to the exception in subsection (1)(a), complete the construction and erection of welcome and farewell signs:

(A) on the four interstate highways and on highway 212 in Carter County before July 1, 1991; and

(B) on the remainder of the primary highways at the earliest possible date.

(b) However, nothing in this subsection (1) prevents the department from constructing and erecting signs on the remaining primary highways before July 1, 1991.

(2) Except as provided in subsection (3), the welcome and farewell signs must be:

(a) (i) on the interstate system, approximately 20 feet high and 38 feet wide; and

(ii) on the primary system, approximately 8 feet high and 16 feet wide;

(b) of substantial timber and plank construction, similar to those shown in the design dated July 16, 1962, and formerly in use at Montana's borders, with the inscriptions:

(i) at each entrance to Montana:

"The Gate is Open
Welcome to
MONTANA"; and

(ii) at each exit from Montana:

"So Long!
Come Again to
MONTANA".

(3) Notwithstanding the provisions of subsection (2), welcome or farewell signs in place on the interstate highway system on April 24, 1989, and required to be replaced under the provisions of this section must be utilized at locations on the primary highway system as long as those signs remain serviceable. When those signs are no longer serviceable, they must be replaced on the primary systems with signs described in subsection (2).

History: En. Sec. 1, Ch. 621, L. 1989.

60-2-219. Department authorized to accept and expend funds for welcome and farewell signs. The department may accept money from other state agencies, federal agencies, or private persons for the purposes of 60-2-218 and may expend the money received for those purposes.

History: En. Sec. 2, Ch. 621, L. 1989.

60-2-220 reserved.

60-2-221. Renumbered 60-2-241 by Code Commissioner, 1989.

60-2-222. *(Temporary)* **Indian historical markers.** Subject to the provisions of federal law, the department shall erect at specified locations on the primary and interstate highways in Montana up to 25 markers that are clearly visible to traffic and that identify sites of significant events in the history of the Indian people of Montana. *(Terminates July 1, 1997—sec. 6, Ch. 667, L. 1989.)*

History: En. Sec. 1, Ch. 667, L. 1989.

60-2-223. *(Temporary)* **Marker location and design — consultation with tribes required.** (1) The preservation review board established in 2-15-1512 shall consult with each of the seven tribal governments in Montana, the Little Shell band of Indians, and the coordinator of Indian affairs before designing the markers, writing the text, and designating the general locations for the markers. The department shall determine the exact location of each marker.

(2) A marker may not be erected if the tribal government and the review board do not agree on its design and text. *(Terminates July 1, 1997—sec. 6, Ch. 667, L. 1989.)*

History: En. Sec. 2, Ch. 667, L. 1989.

60-2-224. *(Temporary)* **Historical society to pay cost of markers from allocation under lodging facility tax.** The Montana historical society shall pay the cost of manufacture and erection of markers provided for in 60-2-222 from funds available to the society under 15-65-121(1)(a) after June 30, 1991, and the society shall expend up to $10,000 each fiscal year for the purposes of 60-2-222. *(Terminates July 1, 1997—sec. 6, Ch. 667, L. 1989.)*

History: En. Sec. 3, Ch. 667, L. 1989.

60-2-225 through 60-2-240 reserved.

60-2-241. Prohibited materials. Neither the department nor any agency of state or local government may use mineral slag in road sanding or snow removal within one-fourth mile of lakes and within 100 yards of streambeds.

History: En. Sec. 1, Ch. 541, L. 1987; Sec. 60-2-221, MCA 1987; redes. 60-2-241 by Code Commissioner, 1989.

Cross-References

Streambeds, Title 75, ch. 7, part 1.

Lakeshores, Title 75, ch. 7, part 2.

Part 3

Ports of Entry, Checking Stations, and Interstate Cooperation

Part Cross-References

Time for payment of size, weight, and load fees by nonresidents — disposition, 61-10-213.

Importation of salmonid fish and eggs, 87-3-221 through 87-3-224.

60-2-301. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state, the department shall establish temporary or permanent ports of entry or checking stations upon highways in the state at places which the department considers necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965; amd. Sec. 84, Ch. 316, L. 1974; R.C.M. 1947, 32-2419.

Cross-References

Size — weight — load, Title 61, ch. 10.

60-2-302. Repealed. Sec. 1, Ch. 104, L. 1983.

History: En. Sec. 2, Ch. 137, L. 1965; amd. Sec. 85, Ch. 316, L. 1974; R.C.M. 1947, 32-2420.

60-2-303. Cooperation in use of ports of entry and checking stations. The department shall cooperate with other agencies and political subdivisions of this state in the use of the ports of entry or checking stations so that maximum use can be made of the facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965; amd. Sec. 86, Ch. 316, L. 1974; R.C.M. 1947, 32-2421.

Cross-References

Multistate Highway Transportation Agreement, Title 61, ch. 10, part 11.

60-2-304 through 60-2-310 reserved.

60-2-311. Interstate agreements for tax and fee collection and port operation. The department may negotiate and enter into a bilateral agreement with an official of an adjoining state or province to provide for the collection by either party state or province of highway user fees, registration fees, permit fees, fuel taxes, or any other fees and taxes that may be prescribed by law or rule. An agreement may further provide for the construction and joint operation of ports of entry along state borders.

History: **En. Sec. 1, Ch. 474, L. 1983.**

Cross-References

Multistate Tax Compact, Title 15, ch. 1, part 6.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

Certificates of ownership, registration, and taxation of motor vehicles, Title 61, ch. 3.

Gross vehicle weight fees, 61-10-124, 61-10-125; Title 61, ch. 10, part 2.

Multistate Highway Transportation Agreement for size and weight standards, Title 61, ch. 10, part 11.

CHAPTER 3

DISTRIBUTION AND APPORTIONMENT OF HIGHWAY FUNDS

Part 1 — Federal-Aid Funds

60-3-101. Assent to federal law.
60-3-102. Purposes.
60-3-103. Purposes for which federal funds to be expended.
60-3-104. Extent of interest acquired.
60-3-105. Expenditure of funds.

Part 2 — State Funds

60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.
60-3-202. Funding highway system maintenance.
60-3-203. Districts for apportionment of department funds.
60-3-204. Apportionment of state construction funds.
60-3-205. Apportionment of state funds to federal-aid primary highway system.
60-3-206. Apportionment of state funds to federal-aid secondary highway system.
60-3-207. Secondary highway information.
60-3-208. Repealed.
60-3-209. Apportionment of state funds to federal-aid interstate highway system.
60-3-210. Increases in obligations.
60-3-211. Apportionment of state funds to federal-aid urban highways.
60-3-212. Interim apportionment to match federal-aid funds.
60-3-213. Allocation for safety construction programs.
60-3-214. Construction or reconstruction of bridges.
60-3-215. Replacement of bridges.
60-3-216. Highway reconstruction trust account.
60-3-217. Expenditures.
60-3-218. Reconstruction trust program.
60-3-219 and 60-3-220 reserved.
60-3-221 through 60-3-234. Repealed.

Part 3 — Footpaths and Bicycle Trails

60-3-301. Short title.
60-3-302. Bicycle trail defined.
60-3-303. Footpaths and bicycle trails to be established — funding.
60-3-304. Duties of department of transportation.

Chapter Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Coal severance tax revenues — allocation to highway reconstruction trust fund account, 15-35-108.

Public contractor's fees and tax, Title 15, ch. 50.

Gasoline and vehicle fuels taxes, Title 15, ch. 70.

License tax on vehicles propelled by liquified petroleum gas, Title 15, ch. 71.

Deposit of gas and oil royalties from federal government in highway account, 17-3-201.

Budgeting and appropriations, Title 17, ch. 7.

Special property tax applications — custom combines, 61-10-130.

Acceptance of gift of lands to state, 77-1-213.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

Coal area highway reconstruction program, 90-6-210.

Part 1

Federal-Aid Funds

Part Cross-References

Authority to contract for road work when federal funds involved, 7-14-4108.

60-3-101. Assent to federal law. (1) The legislature, for and on behalf of the state, assents to the provisions of Title 23, U.S.C.

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the laws assented to and all other laws granting aid for public highways and to obtain for the state the full benefits of such laws.

(4) The department may do all other things necessary or required to carry out fully the cooperation contemplated by the acts of congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965; amd. Sec. 71, Ch. 316, L. 1974; R.C.M. 1947, 32-2401; amd. Sec. 7, Ch. 23, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

60-3-102. Purposes. The purposes of 60-3-102 through 60-3-105 are to:

(1) promote the safety, convenience, and enjoyment of travel on and protection of the public investment in the highways of this state;

(2) restore, preserve, and enhance scenic beauty within the right-of-way of and adjacent to the highways;

(3) entitle the state to receive and expend the 3% nonmatching funds from the United States under Title 23, United States Code.

History: En. Sec. 1, Ch. 286, L. 1967; amd. Sec. 87, Ch. 316, L. 1974; R.C.M. 1947, 32-2422.

Cross-References

Glacier National Park, 2-1-205.

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.

Yellowstone National Park, 2-1-207.

State parks — connecting roads, 23-1-104.

60-3-103. Purposes for which federal funds to be expended. The department may expend funds apportioned to the state under 23 U.S.C. 319 for the following purposes:

(1) landscape and roadside development within the rights-of-way of federal-aid highways of this state;

(2) acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways; and

(3) acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights-of-way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967; amd. Sec. 88, Ch. 316, L. 1974; R.C.M. 1947, 32-2423; amd. Sec. 8, Ch. 23, L. 1979.

Cross-References

Purposes for which property acquired, 60-4-103.

Informational signs — federal requirements — conflict and accord, 60-5-527.

Outdoor advertising — policy, 75-15-102.

Junkyard regulation — agreements with the United States, 75-15-204.

60-3-104. Extent of interest acquired. The department may acquire the fee simple or any lesser estate or interest as determined by it to be reasonably necessary to accomplish the purposes of 60-3-102 through 60-3-105. Acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 286, L. 1967; amd. Sec. 89, Ch. 316, L. 1974; R.C.M. 1947, 32-2424.

Cross-References

Acquisition and disposition of property, Title 60, ch. 4, part 1.

60-3-105. Expenditure of funds. The department shall expend only nonmatching funds authorized under 23 U.S.C. 319(b) in carrying out the authority granted by 60-3-102 through 60-3-104.

History: En. Sec. 4, Ch. 286, L. 1967; amd. Sec. 90, Ch. 316, L. 1974; R.C.M. 1947, 32-2425; amd. Sec. 9, Ch. 23, L. 1979.

Part 2

State Funds

Part Cross-References

Allocation of state funds for public transportation, 7-14-102.

Payment of cost of weed control program, 7-22-2144.

Disposal of coal severance taxes — coal area highway improvement, 15-35-108.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

60-3-201. Distribution and use of proceeds of gasoline dealers' license tax. (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision:

(a) 9/10 of 1% of all money must be deposited in the state park account;

(b) 1/2 of 1% of all money must be deposited in a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money must be deposited in the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the federal-aid highways in this state selected and designated under Title 23, U.S.C., on highways leading from each county seat in the state to the federal highway system of federal-aid roads if the county seat is not on the system, and on the other roads that have been or may be authorized by the laws of Montana;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of

state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety, and 10% of the amount deposited in the snowmobile account must be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 1/2 of 1% is used for propelling snowmobiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974; amd. Sec. 8, Ch. 477, L. 1975; amd. Sec. 1, Ch. 372, and Sec. 1, Ch. 382, L. 1977; R.C.M. 1947, 32-2601; amd. Sec. 10, Ch. 23, L. 1979; amd. Sec. 1, Ch. 607, L. 1979; amd. Sec. 26, Ch. 298, L. 1983; amd. Sec. 1, Ch. 558, L. 1985; amd. Sec. 10, Ch. 512, L. 1991; amd. Sec. 1, Ch. 698, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 512 in (1), in first sentence before "suspense account for gasoline tax refund", substituted "department of transportation's" for "department of revenue's" and in second sentence substituted "The portion" for "so much"; in (1)(d) substituted "department of transportation" for "department of commerce"; in (1)(e)(i) substituted "department of transportation" for "department of highways"; in (5) deleted former second sentence that read: "For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety"; in (7) substituted "department of transportation" for "department of commerce"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 698 inserted (1)(c) requiring deposit of 1/8 of 1% of license tax proceeds in an off-highway vehicle account; in (5) deleted former second sentence that read: "For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety"; inserted (6) specifying allowable uses for money credited to the off-highway vehicle account; and made minor changes in style. Amendment effective July 1, 1991.

Cross-References

Distributor's Gasoline License Tax Act, Title 15, ch. 70, part 2.

60-3-202. Funding highway system maintenance. For the purpose of funding the increased cost of maintaining the state highway system as designated in 60-2-105, 1/4 cent per gallon of the special fuel tax collected under 15-70-321 and 1/4 cent per gallon of the gasoline license tax collected under 15-70-204 are allocated therefor.

History: En. 32-2407.4 by Sec. 6, Ch. 390, L. 1977; R.C.M. 1947, 32-2407.4.

60-3-203. Districts for apportionment of department funds. All money available to the department for highway construction purposes shall be apportioned among five financial districts, corresponding to and congruent with the highway commission districts established in 2-15-2502.

History: En. Sec. 4-306, Ch. 197, L. 1965; amd. Sec. 95, Ch. 316, L. 1974; R.C.M. 1947, 32-2603; amd. Sec. 2, Ch. 62, L. 1983.

60-3-204. Apportionment of state construction funds. Each fiscal year the department shall apportion available state construction funds to the various federal-aid highway systems which are required to match the amounts of federal aid available for obligation on each respective system. The state's share of the cost of final judgments in court awards made to construction contractors on state highway construction projects during the previous fiscal year may be deducted from funds available prior to the apportionments provided in this section, and this cost shall be credited to the accounts of the highway system, financial district, county, or urban city involved as an offset to the charges made to the accounts as a result of the final judgment. The deductions may be made only when the amount of these judgments would prohibit or seriously impair the highway construction program in a financial district, county, or urban city.

History: En. Sec. 4-308, Ch. 197, L. 1965; amd. Sec. 1, Ch. 283, L. 1971; amd. Sec. 97, Ch. 316, L. 1974; amd. Sec. 1, Ch. 31, L. 1975; R.C.M. 1947, 32-2605; amd. Sec. 1, Ch. 22, L. 1981.

60-3-205. Apportionment of state funds to federal-aid primary highway system. (1) Prior to the beginning of each biennium, the commission, referring to highway sufficiency ratings developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment of construction funds for the federal-aid primary system during the succeeding biennium.

(2) The department shall then compute the ratio:

(a) between the mileage rated below adequate sufficiency in each financial district and the total mileage rated below adequate sufficiency of the federal-aid primary system in the state; and

(b) between the mileage rated at or below critical sufficiency in each financial district and the total mileage rated at or below critical sufficiency of the federal-aid primary system in the state.

(3) The department, subject to the limitation provided in subsection (4), shall then distribute three-fourths of the available state construction funds for the federal-aid primary system among the financial districts according to the ratios computed in subsection (2)(a) and one-fourth of the available state construction funds for the federal-aid primary system among the financial districts according to the ratios computed in subsection (2)(b).

(4) A financial district may not receive more than one-third of the total funds available for the federal-aid primary system in any biennium. If a financial district would receive more than one-third of the total funds available under the formula in subsection (3), its apportionment is limited to the one-third maximum and any excess funds it would have received must be redistributed among the other districts according to the formula.

History: En. Sec. 4-309, Ch. 197, L. 1965; amd. Sec. 98, Ch. 316, L. 1974; amd. Sec. 2, Ch. 31, L. 1975; R.C.M. 1947, 32-2606; amd. Sec. 1, Ch. 412, L. 1983.

60-3-206. Apportionment of state funds to federal-aid secondary highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) one-fourth in the ratio of land area in each district to the total land area in the state;

(b) one-fourth in the ratio of the rural population in each district to the total rural population in the state;

(c) one-fourth in the ratio of the rural road mileage in each district to the total rural road mileage in the state;

(d) one-fourth in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, obligations in any county may exceed the amount apportioned to that county to the extent of five times the amount of the last apportionment to the county. The amount of any excess obligations shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) "Rural population" means total population less the population in cities over 5,000 persons and their unincorporated fringe urban areas as reported in the latest federal census. Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) "Rural road mileage" means all road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system. Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965; amd. Sec. 12, Ch. 391, L. 1973; amd. Sec. 99, Ch. 316, L. 1974; amd. Sec. 3, Ch. 31, L. 1975; R.C.M. 1947, 32-2607; amd. Sec. 2, Ch. 22, L. 1981; amd. Sec. 1, Ch. 25, L. 1989.

Cross-References

Classification of state lands, Title 77, ch. 1, part 4.

60-3-207. Secondary highway information. On or before November 30 of each year, the department shall inform each board of county commissioners of:

(1) the total amount of secondary highway funds and the amount apportioned to each county;

(2) the location of proposed secondary highway projects, when the information is available;

(3) any other matters regarding secondary highway construction which the department considers advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965; amd. Sec. 100, Ch. 316, L. 1974; R.C.M. 1947, 32-2608; amd. Sec. 3, Ch. 22, L. 1981.

Cross-References

Duties of County Commissioners concerning county roads, 7-14-2103.

Reports to Department of Transportation, 7-14-2105.

Transfer to state of county responsibility for right-of-way, 7-14-2109.

60-3-208. Repealed. Sec. 1, Ch. 46, L. 1985.

History: En. 32-2607.1 by Sec. 1, Ch. 79, L. 1977; R.C.M. 1947, 32-2607.1; amd. Sec. 1, Ch. 35, L. 1979; amd. Sec. 4, Ch. 22, L. 1981.

60-3-209. Apportionment of state funds to federal-aid interstate highway system. (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the department in accordance with Title 23, U.S.C.

History: En. Sec. 4-312, Ch. 197, L. 1965; amd. Sec. 101, Ch. 316, L. 1974; amd. Sec. 4, Ch. 31, L. 1975; R.C.M. 1947, 32-2609; amd. Sec. 11, Ch. 23, L. 1979.

60-3-210. Increases in obligations. (1) The department may increase the obligations made in a financial district to the extent of:

(a) 25% more than the amount of money allocated to the district in the latest year for the federal-aid primary system or the federal-aid secondary system;

(b) 300% more than the amount of money allocated to the district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to a district for the next succeeding fiscal year shall be decreased by an amount equal to any increased obligations.

History: **En. Sec. 4-313, Ch. 197, L. 1965; amd. Sec. 1, Ch. 290, L. 1973; amd. Sec. 102, Ch. 316, L. 1974; amd. Sec. 1, Ch. 318, L. 1974; R.C.M. 1947, 32-2610; amd. Sec. 5, Ch. 22, L. 1981.**

60-3-211. Apportionment of state funds to federal-aid urban highways. (1) Each fiscal year the department shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over 5,000 population in the ratio of urban population in each city to the total urban population in all cities in the state over 5,000 population.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over 5,000 population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any city may exceed the amount apportioned to that city. The amount of any excess obligations shall be deducted from future apportionments to that city.

History: **En. Sec. 4-314, Ch. 197, L. 1965; amd. Sec. 103, Ch. 316, L. 1974; amd. Sec. 5, Ch. 31, L. 1975; R.C.M. 1947, 32-2611; amd. Sec. 6, Ch. 22, L. 1981.**

60-3-212. Interim apportionment to match federal-aid funds. During the interim between legislative sessions, the department of transportation is delegated power and authority to develop formulas to apportion state construction funds in an equitable manner consistent with the intent of this title to match federal-aid funds for highway systems or purposes not enumerated in this title. Such apportionment formulas shall be valid only until approved, modified, or rejected by the next legislative session.

History: **En. 32-2612 by Sec. 1, Ch. 402, L. 1973; R.C.M. 1947, 32-2612; amd. Sec. 12, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.**

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Legislative sessions — time and place of meeting, 5-2-103.

60-3-213. Allocation for safety construction programs. (1) Each fiscal year the department of transportation shall allocate available state construction funds to match federal-aid highway funds made available by the Federal-Aid Highway Act of 1973 for the following safety construction programs:

(a) rail-highway crossings;
(b) high-hazard locations;
(c) elimination of roadside obstacles;
(d) safer roads demonstration; and
(e) pavement marking demonstration.

(2) Such allocation shall be made from available state construction moneys before the apportionments provided for in 60-3-205, 60-3-206, and 60-3-211.

History: **En. 32-2613 by Sec. 1, Ch. 216, L. 1974; amd. Sec. 6, Ch. 31, L. 1975; R.C.M. 1947, 32-2613; amd. Sec. 3, Ch. 512, L. 1991.**

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway safety, Title 61, ch. 2.

60-3-214. Construction or reconstruction of bridges. (1) The department may allocate from state construction moneys available for the federal-aid highway system up to $1 million in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the department, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be obligated to:

(a) primary bridges when the department's estimate of the cost of construction or reconstruction is in excess of $500,000;

(b) secondary bridges when the department's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of 3 years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment in 60-3-205 and for the secondary system before the apportionment in 60-3-206.

(4) The department may allocate from state construction money available for the federal-aid highway system money to construct a bridge located outside the boundaries of Montana if it determines, after an economic analysis of the cost of construction and maintenance of the bridge and the roads that adjoin it, that it is more economical to construct the bridge at such location than at a location within the boundaries of Montana and if another state participates in the funding of the project.

History: En. Sec. 4-307, Ch. 197, L. 1965; amd. Sec. 96, Ch. 316, L. 1974; R.C.M. 1947, 32-2604; amd. Sec. 7, Ch. 22, L. 1981; amd. Sec. 1, Ch. 38, L. 1981.

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

Designation of highways not located entirely within the state, 60-2-106.

60-3-215. Replacement of bridges. (1) Whenever funds are made available under Title 23, U.S.C., for the replacement of bridges, the department may allocate from state construction money such money as is necessary to match the available federal funds. Such allocation shall be made from available state construction money before the apportionments provided for in 60-3-205, 60-3-206, and 60-3-211.

(2) Whenever such state construction money is so allocated, the amount allocated may not be deducted from future apportionments to the financial district or city.

History: En. 32-2614 by Sec. 1, Ch. 102, L. 1974; amd. Sec. 1, Ch. 78, L. 1977; R.C.M. 1947, 32-2614; amd. Sec. 13, Ch. 23, L. 1979.

60-3-216. *(Temporary)* **Highway reconstruction trust account.** (1) There is a highway reconstruction trust account created in the state special revenue fund.

(2) The highway reconstruction trust fund account consists of allocations:

(a) from the taxes collected pursuant to 15-35-103 for each fiscal year beginning on or after July 1, 1986, and ending on or before June 30, 2003, the amounts allocated to the account pursuant to 15-35-108; and

(b) from the taxes collected pursuant to 15-70-204 and 15-70-321, for each fiscal year beginning on or after July 1, 1983, and ending on or before June 30, 2003, in an amount that will equal appropriated expenditures. *(Terminates July 1, 2003—sec. 1, Ch. 191, L. 1991.)*

History: En. Sec. 1, Ch. 541, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 5, Ch. 20, Sp. L. June 1986; amd. Sec. 2, Ch. 191, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(a) and (2)(b) substituted "June 30, 2003" for "June 30, 1993". Amendment effective March 27, 1991.

Termination Date Extended: Section 1, Ch. 191, L. 1991, amended sec. 7, Ch. 541, L. 1983, to read: "Sections 1 through 5 [60-3-216, 60-3-217, and 60-3-218 and the 1983 amendments to 15-35-108 and 17-3-201, now repealed] are effective July 1, 1983, and terminate July 1, 2003." Effective March 27, 1991.

Effective Date — Applicability — Termination Date: Section 4, Ch. 191, L. 1991, provided: "(1) [This act] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] is effective on passage and approval [approved March 27, 1991].

(2) [Section 1] [amending sec. 7, Ch. 541, L. 1983] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] terminate July 1, 2003."

Cross-References

Coal severance tax revenues — allocation to highway reconstruction trust fund account, 15-35-108.

Treasury fund structure, 17-2-102.

60-3-217. *(Temporary)* **Expenditures.** The department shall expend the money of the highway reconstruction trust fund account on the federal-aid interstate, primary, and secondary highway systems and on those highways that it is required to maintain by 60-2-203. If needed, these funds may be apportioned to the various federal-aid systems to match the federal-aid funds available for obligation. *(Terminates July 1, 2003—sec. 1, Ch. 191, L. 1991.)*

History: En. Sec. 2, Ch. 541, L. 1983; amd. Sec. 1, Ch. 39, L. 1985.

Compiler's Comments

Termination Date Extended: Section 1, Ch. 191, L. 1991, amended sec. 7, Ch. 541, L. 1983, to read: "Sections 1 through 5 [60-3-216, 60-3-217, and 60-3-218 and the 1983 amendments to 15-35-108 and 17-3-201, now repealed] are effective July 1, 1983, and terminate July 1, 2003." Effective March 27, 1991.

Effective Date — Applicability — Termination Date: Section 4, Ch. 191, L. 1991, provided: "(1) [This act] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] is effective on passage and approval [approved March 27, 1991].

(2) [Section 1] [amending sec. 7, Ch. 541, L. 1983] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] terminate July 1, 2003."

60-3-218. *(Temporary)* **Reconstruction trust program.** (1) Subject to 60-3-217, the department shall administer a program to initiate, plan, design, and carry out reconstruction projects on the primary and secondary systems and on those highways that it is required to maintain by 60-2-203 to straighten, widen, repair, or preserve existing pavement or make major improvements to existing highways. Funds expended under 60-3-217 may be used for pavement preservation projects on the interstate and primary systems but may not be used for routine repairs. The department shall expend these funds throughout the state according to need, without regard to 60-3-203. Priority must be given to those projects necessitated in whole or in part by the impact of mineral development.

(2) In order to accommodate changes in the financial district structure and implementation of the reconstruction program, the department may suspend the 25% overrun limitation on the allocation of federal-aid primary funds for fiscal years 1984 and 1985. *(Terminates July 1, 2003—sec. 1, Ch. 191, L. 1991.)*

History: En. Sec. 3, Ch. 541, L. 1983; amd. Sec. 2, Ch. 39, L. 1985.

Compiler's Comments

Termination Date Extended: Section 1, Ch. 191, L. 1991, amended sec. 7, Ch. 541, L. 1983, to read: "Sections 1 through 5 [60-3-216, 60-3-217, and 60-3-218 and the 1983 amendments to 15-35-108 and 17-3-201, now repealed] are effective July 1, 1983, and terminate July 1, 2003." Effective March 27, 1991.

Effective Date — Applicability — Termination Date: Section 4, Ch. 191, L. 1991, provided: "(1) [This act] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] is effective on passage and approval [approved March 27, 1991].

(2) [Section 1] [amending sec. 7, Ch. 541, L. 1983] applies retroactively, within the meaning of 1-2-109, to April 16, 1983.

(3) [Sections 1 through 3] [amending sec. 7, Ch. 541, L. 1983, 15-35-108, and 60-3-216] terminate July 1, 2003."

Cross-References

Coal severance tax revenues — allocation to highway reconstruction trust fund account, 15-35-108.

Coal area highway reconstruction program, 90-6-210.

60-3-219 and 60-3-220 reserved.

60-3-221 through 60-3-234. Repealed. Sec. 1, Ch. 46, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

60-3-221. En. 32-2615 by Sec. 1, Ch. 106, L. 1974; R.C.M. 1947, 32-2615; amd. Sec. 14, Ch. 23, L. 1979.

60-3-222. En. 32-2616 by Sec. 2, Ch. 106, L. 1974; R.C.M. 1947, 32-2616.

60-3-223. En. 32-2617 by Sec. 3, Ch. 106, L. 1974; R.C.M. 1947, 32-2617.

60-3-224. En. 32-2618 by Sec. 4, Ch. 106, L. 1974; amd. Sec. 7, Ch. 31, L. 1975; R.C.M. 1947, 32-2618.

60-3-225. En. 32-2619 by Sec. 5, Ch. 106, L. 1974; R.C.M. 1947, 32-2619; amd. Sec. 8, Ch. 22, L. 1981.

60-3-226 through 60-3-230 reserved.

60-3-231. En. 32-2620 by Sec. 1, Ch. 105, L. 1974; R.C.M. 1947, 32-2620; amd. Sec. 15, Ch. 23, L. 1979.

60-3-232. En. 32-2621 by Sec. 2, Ch. 105, L. 1974; R.C.M. 1947, 32-2621; amd. Sec. 16, Ch. 23, L. 1979.

60-3-233. En. 32-2622 by Sec. 3, Ch. 105, L. 1974; amd. Sec. 8, Ch. 31, L. 1975; R.C.M. 1947, 32-2622.

60-3-234. En. 32-2623 by Sec. 4, Ch. 105, L. 1974; amd. Sec. 9, Ch. 31, L. 1975; R.C.M. 1947, 32-2623; amd. Sec. 9, Ch. 22, L. 1981.

Part 3

Footpaths and Bicycle Trails

Part Cross-References

"Bicycle" defined, 61-1-123.

Traffic safety program, Title 61, ch. 2, part 1.

Traffic regulations, Title 61, ch. 8.

Bicycles on sidewalks, 61-8-608.

Bicycle racing — when lawful, 61-8-609.

60-3-301. Short title. This part may be cited as the "Montana Footpath and Bicycle Trail Act of 1975".

History: En. 32-2624 by Sec. 1, Ch. 544, L. 1975; R.C.M. 1947, 32-2624; amd. Sec. 17, Ch. 23, L. 1979.

60-3-302. Bicycle trail defined. As used in this part, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route.

History: En. 32-2625 by Sec. 2, Ch. 544, L. 1975; R.C.M. 1947, 32-2625.

60-3-303. Footpaths and bicycle trails to be established — funding. (1) The highway commission or a county or city, with funds received from the state highway commission state special revenue fund, may construct footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails may be established along all streets under state jurisdiction. Funds received from the state special revenue fund may also be expended to construct footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas if the construction enhances traffic safety and convenience. Footpaths and bicycle trails may be constructed along all sections of the national defense interstate highway system.

(2) Footpaths and trails may not be established under subsection (1) of this section:

(a) if the cost of establishing the paths and trails is excessively disproportionate to the need or probable use; or

(b) if sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The state highway commission shall let to contract in any period of 5 consecutive fiscal years not less than an average of $200,000 per year for footpaths and bicycle trails. The department shall establish accounting procedures to document compliance with this subsection.

History: En. 32-2626 by Sec. 3, Ch. 544, L. 1975; R.C.M. 1947, 32-2626; amd. Sec. 18, Ch. 23, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 60, L. 1989.

60-3-304. Duties of department of transportation. (1) The establishment of paths and trails and the expenditure of funds as authorized by this part are for the promotion of traffic safety on the highways, roads, and streets of the state. The highway commission shall, when requested, provide technical assistance and advice to cities and counties in carrying out the purpose of this part.

(2) The department of transportation shall recommend construction standards for footpaths and bicycle trails. The department shall provide a uniform system of signing footpaths and bicycle trails which shall apply to paths and trails under the jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in cooperation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit.

History: En. 32-2627 by Sec. 4, Ch. 544, L. 1975; R.C.M. 1947, 32-2627; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

CHAPTER 4

ACQUISITION AND DISPOSITION OF PROPERTY

Part 1 — Acquisition of Property

60-4-101. Rights acquired by public in highway.
60-4-102. General power of department to acquire interests in property.
60-4-103. Purposes for which property acquired.
60-4-104. Exercise of right of eminent domain — presumption.
60-4-105. Acquisition of whole parcel — sale of excess.
60-4-106. Power to acquire for future.
60-4-107. Road-building materials.
60-4-108. No compensation in certain cases — exceptions.
60-4-109. Irrigable lands rendered unusable — unpaid construction costs.
60-4-110. Highway crossing railroad, canal, or ditch.
60-4-111. Acquisition of property for controlled-access facility.

Part 2 — Disposition of Property

60-4-201. Exchange of interest in real property.
60-4-202. Sale of interest in real property.
60-4-203. Conduct of sale.
60-4-204. Option of original owner or successor in interest to purchase at sale price.
60-4-205. Private sale if no bid or offer.
60-4-206. Sale of personal property and printed matter.
60-4-207. Conveyances — execution and contents.
60-4-208. Abandonment or vacation of federal-aid or state highways.
60-4-209. Abandoned highway property — title vests in contiguous owner.

Part 3 — Relocation of Displaced Persons (Repealed. Sec. 6, Ch. 374, L. 1989)

Part 4 — Relocation of Utilities

60-4-401. Relocation — definitions.
60-4-402. Relocation of utility facilities — hearings — order.
60-4-403. Relocation — costs.

Chapter Cross-References

Duty to notify weed management district board when proposed project will disturb land, 7-22-2152.

Availability of remedies — liability, Title 27, ch. 1.

State lands — transfers and reservations of property interests, Title 77, ch. 2.

Part 1

Acquisition of Property

Part Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.; Title 70, ch. 30.

Right to construct pipeline, 69-13-103, 69-13-104.

Owner of land bounded by road, 70-16-202.

Transfer of land bounded by highway — what passes, 70-20-307.

Local governments may acquire property, 76-5-1108.

Contracts for use of railroads and highways, 76-5-1109.

60-4-101. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965; R.C.M. 1947, 32-3901.

Cross-References

Classifications of interest in real property, Title 70, ch. 15, part 2.

60-4-102. General power of department to acquire interests in property. Notwithstanding any other provision of law, the department of transportation may acquire by purchase or other lawful manner lands or other real property, excluding oil, gas, and mineral rights, which it considers reasonably necessary for present or future highway purposes. The department may acquire a fee simple or lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965; amd. Sec. 126, Ch. 316, L. 1974; R.C.M. 1947, 32-3902; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-4-103. Purposes for which property acquired. The acquisition of lands or other property or any interest therein for present or future highway purposes includes but is not limited to any of the following purposes:

(1) for rights-of-way, including those necessary for highways within cities;

(2) for exchanging lands or other property or any interest therein for other such lands or interests for rights-of-way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) for deposits of road building materials, including rock, gravel, sand, and earth, for reasonably foreseeable future road-building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) for offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities;

(5) for parks adjoining or near any highway;

(6) for the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed;

(7) for drainage in connection with any highway;

(8) for the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(9) for the construction and maintenance of stock lanes or trails;

(10) for the construction and maintenance or replacement of private or public drainage systems or natural water or drainage courses made necessary by highway construction;

(11) for providing land or other real property easements or rights-of-way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right-of-way.

History: En. Sec. 8-103, Ch. 197, L. 1965; R.C.M. 1947, 32-3903.

Cross-References

Public uses enumerated, 70-30-102.

60-4-104. Exercise of right of eminent domain — presumption. (1) Whenever the department cannot acquire lands or other property or interests in the lands or property at a price or cost which it considers reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in Title 70, chapter 30, against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts an order declaring that:

(a) public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in 60-4-103;

(b) the interest described in the order and sought to be condemned is necessary for the highway or improvement;

(c) the highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The order creates and establishes a disputable presumption:

(a) of the public necessity of the proposed highway or improvement;

(b) that the taking of the interest sought is necessary therefor;

(c) that the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965; amd. Sec. 127, Ch. 316, L. 1974; R.C.M. 1947, 32-3904.

Cross-References

Disputable presumptions, 26-1-602.

60-4-105. Acquisition of whole parcel — sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes leaving the remainder in a shape or condition as to be of little market value or to give rise to claims or litigation over severance or other damage, the department may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in a shape or size as to come within the Montana Subdivision and Platting Act, the department shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965; amd. Sec. 128, Ch. 316, L. 1974; R.C.M. 1947, 32-3905; amd. Sec. 19, Ch. 23, L. 1979.

Cross-References

Montana Subdivision and Platting Act, Title 76, ch. 3.

60-4-106. Power to acquire for future. (1) The power conferred by this chapter to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The department may lease unused portions of lands or other real property which are held for highway purposes and interstate highway rights-of-way which are not presently needed for highway purposes on the terms and conditions which it decides. The department may repair, maintain, and care for the property in order to secure rent from it.

(3) All rent received shall be deposited to the credit of the department.

History: En. Sec. 8-106, Ch. 197, L. 1965; amd. Sec. 129, Ch. 316, L. 1974; R.C.M. 1947, 32-3906.

Cross-References

Weed control responsibility, 70-30-314.

Acquisition of buildings and improvements affected, 70-31-305.

60-4-107. Road-building materials. (1) A right-of-way or easement acquired by the department for construction, operation, repair, reconstruction, or maintenance of highways includes, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of gravel and other road-building materials found or located within the boundaries of the right-of-way or easement.

(2) For the purposes of this chapter, the gravel or materials are considered to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965; amd. Sec. 130, Ch. 316, L. 1974; R.C.M. 1947, 32-3907.

60-4-108. No compensation in certain cases — exceptions. (1) Whenever the department files a description and plan as provided in 60-2-209, no consideration, allowance, or assessment of values or compensation shall be made in the purchase or condemnation of buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective 1 year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in 60-2-209 applies to crops or similar improvements planted on the lands described. They are governed by 70-30-302.

History: En. Sec. 8-108, Ch. 197, L. 1965; amd. Sec. 131, Ch. 316, L. 1974; R.C.M. 1947, 32-3908.

Cross-References

Acquisition of buildings and improvements affected, 70-31-305.

60-4-109. Irrigable lands rendered unusable — unpaid construction costs. (1) Whenever the department acquires irrigable land for highway purposes or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

(2) The department shall also pay a lump-sum amount to the district sufficient to produce, on an amortized basis for a reasonable period not to exceed 90 years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the department and not overcome by bringing new or additional land under irrigation. For the purpose of determining the amount of the lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the 5 years, or so many years as the district has assessment experience if less than 5 years, preceding the date of acquisition.

History: En. Sec. 8-116, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969; amd. Sec. 139, Ch. 316, L. 1974; R.C.M. 1947, 32-3916.

Cross-References

Alteration and determination of irrigation district acreage, Title 85, ch. 7, part 18.

Irrigation districts — sale or transfer of lands, 85-7-2167.

60-4-110. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965; R.C.M. 1947, 32-3918.

Cross-References

Railroad highway crossings, Title 69, ch. 14, part 6.

Rights-of-way for irrigation works, 85-7-1909.

60-4-111. Acquisition of property for controlled-access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in cooperation one with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right-of-way is hereby given, dedicated, and set apart for controlled-access highways or controlled-access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled-access highway. Acquisition of any county road, street, or alley for use as a controlled-access highway or controlled-access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965; R.C.M. 1947, 32-3920.

Cross-References

Local government — acquisition of property for controlled-access facility, 7-14-101.

"Controlled-access highway" and "controlled-access facility" defined, 60-5-102.

"Controlled-access highway" defined, 61-1-211.

Part 2

Disposition of Property

Part Cross-References

Transfer of land bounded by highway — what passes, 70-20-307.

Sale of property acquired for public use when use abandoned — procedure, 70-30-321.

Transfers and reservations of state property interests, Title 77, ch. 2.

60-4-201. Exchange of interest in real property. (1) The department may determine that an interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of a highway. It may then exchange the interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The department may establish the manner and terms and conditions for the exchange.

(2) The owner from whom the interest was originally acquired by the state or his successor in interest has the right to require the department to offer the land for sale in the manner set forth in 60-4-202 and 60-4-203. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered or certified mail to the department within 10 days after receipt of notice from the department.

History: En. Sec. 8-109, Ch. 197, L. 1965; amd. Sec. 132, Ch. 316, L. 1974; R.C.M. 1947, 32-3909.

Cross-References

Power to sell, lease, or exchange certain state lands, 77-1-204.

60-4-202. Sale of interest in real property. The department may sell an interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway. If the interest is reasonably of a value in excess of $100, sale shall be made to the highest bidder at public auction. The sale shall be conducted as provided in 77-2-321.

History: En. Sec. 8-110, Ch. 197, L. 1965; amd. Sec. 133, Ch. 316, L. 1974; R.C.M. 1947, 32-3910; amd. Sec. 1, Ch. 305, L. 1981.

60-4-203. Conduct of sale. (1) The department shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for 4 successive weeks. The notice of sale shall contain the information required by 77-2-322. Sale shall be held in the county wherein the property is located.

(2) Before the sale of an interest having a value in excess of $100, the department shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) A sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-111, Ch. 197, L. 1965; amd. Sec. 1, Ch. 21, L. 1974; amd. Sec. 134, Ch. 316, L. 1974; R.C.M. 1947, 32-3911; amd. Sec. 20, Ch. 23, L. 1979; amd. Sec. 2, Ch. 305, L. 1981.

Cross-References

Transfer of real property, Title 70, ch. 20.

60-4-204. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired or his successor in interest shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the department by registered or certified mail within 10 days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965; amd. Sec. 135, Ch. 316, L. 1974; R.C.M. 1947, 32-3912.

Cross-References

Option of original owner or successor in interest to purchase at sale price, 70-30-322.

60-4-205. Private sale if no bid or offer. (1) If, after proper notice is published, the department receives neither bid at public sale nor offer from the original owner or his successor in interest, it may at any time thereafter sell the interest at private sale. At the sale, the department may accept as the purchase price an amount of money not less than 90% of the appraised value.

(2) Title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department.

History: En. Sec. 8-113, Ch. 197, L. 1965; amd. Sec. 136, Ch. 316, L. 1974; R.C.M. 1947, 32-3913; amd. Sec. 21, Ch. 23, L. 1979.

Cross-References

Effect of transfer, Title 70, ch. 20, part 3.

60-4-206. Sale of personal property and printed matter. (1) The department may sell at public or private sale, as it determines, an interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of a highway.

(2) The department may sell at public or private sale, as it determines, maps, books, pamphlets, or other printed matter prepared or acquired by the department. The department may sell copies of highway records to the public and may set reasonable prices for them.

(3) The proceeds from sales made under this section shall be paid into the state treasury to the credit of the department.

History: En. Sec. 8-114, Ch. 197, L. 1965; amd. Sec. 137, Ch. 316, L. 1974; R.C.M. 1947, 32-3914.

Cross-References

Public records management, Title 2, ch. 6, part 2.

Sale of highway equipment by bid, 18-6-103.

Duties of Department of Transportation, 60-2-202.

60-4-207. Conveyances — execution and contents. (1) Land or an interest in land sold by the department shall be conveyed only when full payment has been made for it. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under this chapter.

(2) The deed or patent shall contain a reservation of easements for rights-of-way for the benefit of the United States and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 138, Ch. 316, L. 1974; R.C.M. 1947, 32-3915.

Cross-References

State lands — certificate of purchase, 77-2-327.

60-4-208. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law or by judgment of a court of competent jurisdiction or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965; R.C.M. 1947, 32-3917.

Cross-References

Abandonment or vacation of county roads, 7-14-2615.

Designation of federal-aid primary highways, 60-2-104.

60-4-209. Abandoned highway property — title vests in contiguous owner. (1) Upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or his successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) The interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of such interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are one and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell such interest.

(5) The interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar development, the property shall revert to the state for sale pursuant to this part. This restriction applies to all subsequent holders of title to the property.

History: En. Sec. 1, Ch. 423, L. 1983.

Cross-References

Sale of property acquired for public use when use abandoned — procedure, 70-30-321.

Reversion of lands to state, 77-2-314.

Part 3

Relocation of Displaced Persons (Repealed. Sec. 6, Ch. 374, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

60-4-301. En. Sec. 3, Ch. 212, L. 1969; amd. Sec. 140, Ch. 316, L. 1974; R.C.M. 1947, 32-3923.

60-4-302. En. Sec. 4, Ch. 212, L. 1969; amd. Sec. 141, Ch. 316, L. 1974; R.C.M. 1947, 32-3924.

60-4-303. En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974; R.C.M. 1947, 32-3925(a), (b).

60-4-304. En. Sec. 5, Ch. 212, L. 1969; amd. Sec. 2, Ch. 426, L. 1971; amd. Sec. 142, Ch. 316, L. 1974; R.C.M. 1947, 32-3925(c).

60-4-305. En. Sec. 6, Ch. 212, L. 1969; amd. Sec. 3, Ch. 426, L. 1971; amd. Sec. 143, Ch. 316, L. 1974; R.C.M. 1947, 32-3926.

60-4-306. En. Sec. 7, Ch. 212, L. 1969; amd. Sec. 4, Ch. 426, L. 1971; amd. Sec. 144, Ch. 316, L. 1974; R.C.M. 1947, 32-3927.

60-4-307. En. Sec. 8, Ch. 212, L. 1969; amd. Sec. 145, Ch. 316, L. 1974; amd. Sec. 1, Ch. 143, L. 1977; R.C.M. 1947, 32-3928.

60-4-308. En. Sec. 9, Ch. 212, L. 1969; amd. Sec. 5, Ch. 426, L. 1971; amd. Sec. 146, Ch. 316, L. 1974; R.C.M. 1947, 32-3929.

60-4-309. En. Sec. 10, Ch. 212, L. 1969; amd. Sec. 147, Ch. 316, L. 1974; R.C.M. 1947, 32-3930.

60-4-310. En. Sec. 11, Ch. 212, L. 1969; amd. Sec. 148, Ch. 316, L. 1974; R.C.M. 1947, 32-3931.

Part 4

Relocation of Utilities

Part Cross-References

Utility lines and facilities, Title 69, ch. 4.

Relocation of overhead utility lines, Title 69, ch. 4, part 4.

60-4-401. Relocation — definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows:

(1) "Utility" includes publicly, privately, and cooperatively owned utilities.

(2) "Cost of relocation" includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) "Federal-aid systems" includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) "Interstate system" includes any highway now included or which may hereafter be included as a part of the national system of interstate and defense highways provided for in Title 23, U.S.C.

History: En. Sec. 4-116, Ch. 197, L. 1965; R.C.M. 1947, 32-2416; amd. Sec. 22, Ch. 23, L. 1979.

60-4-402. Relocation of utility facilities — hearings — order. (1) After appropriate hearings, the department may adopt reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of a utility in, on, along, over, across, through, or under a project on any of the federal-aid systems.

(2) The department shall give written notice of the place and time of a public hearing to determine the necessity of a relocation of facilities to all concerned not less than 20 days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the department may determine that the facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the order of the department. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965; amd. Sec. 82, Ch. 316, L. 1974; R.C.M. 1947, 32-2414.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Use of public right-of-way for utility lines and facilities, 69-4-101.

60-4-403. Relocation — costs. Seventy-five percent of all costs of relocation, including the costs of acquisition of new right-of-way, of dismantling, and of removal, shall be paid by the department as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965; amd. Sec. 83, Ch. 316, L. 1974; R.C.M. 1947, 32-2415.

Cross-References

Costs of relocation, 69-4-404.

CHAPTER 5

CONTROL OF ACCESS AND INFORMATION SIGNS

Part 1 — Control of Access

60-5-101. Policy.
60-5-102. Definitions.
60-5-103. Designation as controlled-access highway.
60-5-104. Powers of highway authorities.
60-5-105. Design of controlled-access facility — entrance and exit restricted.
60-5-106. Elimination of grade crossings.
60-5-107. Existing roads and streets as service roads.
60-5-108. Maintenance of frontage roads.
60-5-109. Marking of controlled-access highway or facility with signs.
60-5-110. Commercial enterprise or structure prohibited — exception.
60-5-111. Violations — penalties.

Parts 2 through 4 reserved

Part 5 — Information Signs

60-5-501. Purpose.
60-5-502. Definitions.
60-5-503. Rulemaking authority.
60-5-504. Motorist information sign program — department.
60-5-505. Franchises.
60-5-506 through 60-5-508 reserved.
60-5-509. Contract requirements.
60-5-510. Costs.
60-5-511. Specific information signs within right-of-way of interstate highway system.
60-5-512. Specific information signs — number of business signs — distances.
60-5-513. Sign composition — spacing — conformity with laws.
60-5-514. Business eligibility — criteria — restrictions.
60-5-515 through 60-5-518 reserved.
60-5-519. Tourist-oriented directional signs within right-of-way of primary highway system.
60-5-520. Tourist-oriented directional signs — number of business signs — distances.
60-5-521. Sign composition — design — conformity with standards and rules.
60-5-522. Business eligibility — criteria — restrictions.
60-5-523 through 60-5-525 reserved.
60-5-526. Restrictions.
60-5-527. Federal requirements — conflict and accord.

Chapter Cross-References

Acquisition of property for controlled-access facility, 7-14-101.

Aircraft landings and takeoffs on public roads, 67-1-204.

Part 1

Control of Access

60-5-101. Policy. The legislature declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to:

(1) highways included by the federal highway administration in the national system of interstate highways;

(2) throughways and intersections with throughways;

(3) such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965; amd. Sec. 152, Ch. 316, L. 1974; R.C.M. 1947, 32-4301; amd. Sec. 23, Ch. 23, L. 1979.

60-5-102. Definitions. When used in this chapter, the following definitions apply:

(1) "Interstate highway" means a highway included as a part of the national system of interstate highways.

(2) "Controlled-access highway" means those portions of an interstate highway, throughway, or throughway intersection which the commission

designates for through traffic or other federal-aid or state highway over, from, or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view. It also means those portions of spurs to the interstate highway system which the commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled-access facility" means and includes streets, alleys, public roads, private roads, and ways of passage intersecting a controlled-access highway and real property contiguous to the right-of-way of a controlled-access highway.

(4) "Existing highway" means and includes highways, roads, and streets established, constructed, and in use on March 2, 1955. It does not include highways, roads, or streets, established, constructed, and in use after that date or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means a state highway designated by agreement between the commission and the secretary of transportation as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means a portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of 300 feet from the point of intersection of the centerlines of a throughway and a public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965; amd. Sec. 153, Ch. 316, L. 1974; R.C.M. 1947, 32-4302.

Cross-References

Through highway, 61-1-210.

Controlled-access highway, 61-1-211.

60-5-103. Designation as controlled-access highway. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled-access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine that it is necessary and desirable that:

(a) the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view;

(b) the rights of or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads, or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled-access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969; R.C.M. 1947, 32-4303.

Cross-References

Highway Commission — designation of federal-aid primary highways, 60-2-104.

60-5-104. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled-access facilities for public use. Each such authority shall by resolution make the findings and determinations provided for in 60-5-103.

(2) The highway authorities of the state, counties, incorporated cities, and towns, respectively, or in cooperation each with the other, may acquire private or public property and property rights for controlled-access highways or controlled-access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(3) Within incorporated cities and towns and upon county roads or secondary highways, the department of transportation shall not control access without the consent of the appropriate governing body.

(4) Each authority may also exercise with relation to controlled-access facilities any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled-access facilities by any vehicles or traffic.

History: (1), (3), (4)En. Sec. 10-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 436, L. 1973; Sec. 32-4305, R.C.M. 1947; (2)En. Sec. 8-218, Ch. 197, L. 1965; Sec. 32-4018, R.C.M. 1947; R.C.M. 1947, 32-4018, 32-4305; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

Municipal authority to establish, alter, and maintain trafficways and public grounds, 7-14-4101.

General powers of Department, 60-2-201.

60-5-105. Design of controlled-access facility — entrance and exit restricted. (1) Each highway authority may so design any controlled-access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled-access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled-access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965; R.C.M. 1947, 32-4306.

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

Restricted and controlled access, 61-8-331.

Restrictions on use of controlled-access roadway, 61-8-332.

60-5-106. Elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled-access highways or controlled-access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled-access right-of-way.

(2) After the establishment of any controlled-access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade, except as may be provided in the resolution designating it a controlled-access highway or facility. No street, road, highway, or other public or private way shall be opened into or connected with any controlled-access highway or facility without the prior consent and approval of the appropriate highway authority which adopted the controlled-access resolution.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled-access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways, and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965; R.C.M. 1947, 32-4307; amd. Sec. 1, Ch. 40, L. 1979.

Cross-References

Establishment and change of street grade, Title 7, ch. 14, part 42.

60-5-107. Existing roads and streets as service roads. (1) In connection with the development of any controlled-access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled-access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965; R.C.M. 1947, 32-4308.

60-5-108. Maintenance of frontage roads. Frontage roads shall be maintained by the department of transportation.

History: En. Sec. 1, Ch. 90, L. 1965; amd. Sec. 154, Ch. 316, L. 1974; R.C.M. 1947, 32-4308.1; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Maintenance responsibility, 60-2-203.

60-5-109. Marking of controlled-access highway or facility with signs. Any controlled-access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled-access area.

History: En. Sec. 10-109, Ch. 197, L. 1965; R.C.M. 1947, 32-4309.

Cross-References

Restricted and controlled access, 61-8-331.

60-5-110. Commercial enterprise or structure prohibited — exception. Except as provided in 60-5-505, no commercial enterprise or structure shall be constructed or operated on the publicly owned right-of-way of a controlled-access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965; R.C.M. 1947, 32-4310; amd. Sec. 18, Ch. 537, L. 1989.

Cross-References

Use of public right-of-way for utility lines and facilities, 69-4-101.

60-5-111. Violations — penalties. (1) On any controlled-access highway or facility, it is unlawful for any person to construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than $5 or more than $100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965; R.C.M. 1947, 32-4311(1), (1)(e), (2).

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Parts 2 through 4 reserved

Part 5

Information Signs

Part Cross-References

Beauty of the state, Preamble, Mont. Const.

Right to clean and healthful environment, Art. II, sec. 3, Mont. Const.

Roadside historical signs, 15-65-121.

General provisions — Department of Transportation, Title 60, ch. 2, part 2.

Vocational-technical center signs, 60-2-216.

Signs identifying mountain ranges, 60-2-217.

Welcome and farewell signs, 60-2-218.

Indian historical markers, 60-2-222.

Commercial enterprise or structure prohibited on highway — exception, 60-5-110.

Outdoor advertising, Title 75, ch. 15, part 1.

60-5-501. Purpose. It is the purpose of this part to provide for the installation of motorist information signs giving specific information of interest to the traveling public regarding motorist services that are conveniently accessible from the interstate and primary highways within the state.

History: En. Sec. 1, Ch. 537, L. 1989.

60-5-502. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Business sign" means a separately attached sign mounted on a motorist information sign panel to show the brand, symbol, trademark, or name, or combination of these, for a motorist service available on a crossroad at or near an interchange or intersection.

(2) "Crossroad" means a marked route or other public road intersecting a freeway or divided highway for which access is provided at an interchange or intersection.

(3) "Department" means the department of transportation provided for in 2-15-2501.

(4) "Franchisee" means a person awarded a franchise as provided in 60-5-505.

(5) "Motorist information sign" means a rectangular sign panel located in the same manner as other official traffic signs, readable from the main traveled way, and that is a:

(a) specific information sign; or

(b) tourist-oriented directional sign.

(6) "Motorist service" means gas, food, lodging, camping, recreation, and other tourist services.

(7) "Specific information sign" means a motorist information sign that is located on the interstate highway system and that contains:

(a) the words "GAS", "FOOD", "LODGING", or "CAMPING";

(b) directional information; and

(c) one or more individual business signs.

(8) "Tourist-oriented directional sign" means a motorist information sign located on the primary highway system to provide:

(a) business identification; and

(b) directional information for businesses, services, and activities of interest to tourists.

History: En. Sec. 2, Ch. 537, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-5-503. Rulemaking authority. The department may adopt rules necessary to implement the provisions of 60-5-501, 60-5-502, 60-5-504, 60-5-505, 60-5-509 through 60-5-514, and 60-5-519 through 60-5-522.

History: En. Sec. 15, Ch. 537, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

60-5-504. Motorist information sign program — department. There is a motorist information sign program to be operated by a franchisee under the general supervision and control of the department.

History: En. Sec. 11, Ch. 537, L. 1989.

60-5-505. Franchises. (1) The department may grant a franchise by public negotiation or bid to qualified persons to establish and operate the motorist information sign program authorized under 60-5-504.

(2) A franchisee shall furnish, install, maintain, and replace motorist information signs for the benefit of businesses that provide motorist services for the general public and may lease space on the signs to eligible businesses.

(3) A franchisee shall comply with the provisions of 60-5-501, 60-5-502, 60-5-511 through 60-5-514, and 60-5-519 through 60-5-522 and any other applicable state and federal laws and regulations.

History: En. Sec. 12, Ch. 537, L. 1989.

Cross-References

Commercial enterprise or structure prohibited — exception, 60-5-110.

60-5-506 through 60-5-508 reserved.

60-5-509. Contract requirements. All contracts made between the department and a franchisee must provide for:

(1) a requirement that the franchisee obtain liability insurance in an amount sufficient to jointly insure the state and the franchisee against all liability for claims for damages occurring wholly or in part because of the franchisee; and

(2) the standards for the size, design, erection, and maintenance that were adopted under 60-5-503.

History: En. Sec. 13, Ch. 537, L. 1989.

60-5-510. Costs. The department shall authorize reasonable fees to cover all costs incurred under the motorist information sign program. Fees must be paid under agreements negotiated between a franchisee and an advertiser unless otherwise provided in the contract between the department and the franchisee.

History: En. Sec. 14, Ch. 537, L. 1989.

60-5-511. Specific information signs within right-of-way of interstate highway system. Specific information signs may be erected and maintained within the right-of-way of the interstate highway system to give the traveling public specific information as to motorist services available on a crossroad at or near an interchange.

History: En. Sec. 3, Ch. 537, L. 1989.

Cross-References

Outdoor advertising prohibited — exceptions, 75-15-111.

60-5-512. Specific information signs — number of business signs — distances. (1) The number of specific information signs permitted is limited to one for each type of motorist service along an approach to an interchange or intersection.

(2) No more than six business signs may be displayed on a "GAS" specific information sign, and no more than four business signs may be displayed on a "FOOD", "LODGING", or "CAMPING" specific information sign. Except as provided in subsection (3), no business may be allowed more than one business sign on the same specific information sign.

(3) In areas where there are only one or two qualified businesses available for each of two or more types of motorist services, business signs for two types of services may be displayed by a business on the same specific information sign. No more than two business signs for each type of service may be displayed in combination on a specific information sign.

(4) To qualify for business identification on a specific information sign, a motorist service facility shall meet the eligibility criteria established in 60-5-514 and may not be located more than 3 miles from the interstate highway. However, if no eligible services are located within the 3-mile limit, the distance limits may be increased in 3-mile increments until either an eligible service or 15 miles is reached.

History: En. Sec. 4, Ch. 537, L. 1989.

60-5-513. Sign composition — spacing — conformity with laws. (1) A specific information sign panel must have a blue background with a white reflectorized border. The panels may be illuminated subject to regulation by the department.

(2) A business sign must have a blue background with a white legend unless other requirements are established by the department. Nationally, regionally, or locally known commercial symbols, brands, or trademarks for service stations, restaurants, campgrounds, and motels must be used when applicable. The symbol, brand, or trademark used on the business sign must be reproduced in the colors and general shape consistent with customary use. Messages, symbols, brands, or trademarks that interfere with or resemble any official warning or regulatory traffic sign, signal, or device are prohibited.

(3) Specific information signs are permitted only at locations where there is adequate distance between interchanges in compliance with the Manual on Uniform Traffic Control Devices, as amended.

(4) The spacing between two specific information sign panels and between specific information sign panels and official traffic control signs must be in accordance with the Manual on Uniform Traffic Control Devices. If there is insufficient space for both official traffic control signs and specific information signs, the official traffic control signs must be installed.

(5) The erection and maintenance of specific information signs must conform to national standards promulgated by the secretary of the U.S. department of transportation pursuant to 23 U.S.C. 131 and 23 U.S.C. 315 and rules adopted by the department under 60-5-503.

History: En. Sec. 5, Ch. 537, L. 1989.

60-5-514. Business eligibility — criteria — restrictions. (1) To be eligible for placement of a business sign on a specific information sign panel, a business establishment shall meet standards for "GAS", "FOOD", "LODGING", and "CAMPING" services in rules adopted by the department pursuant to guidelines in the Manual on Uniform Traffic Control Devices, as amended.

(2) (a) Each business identified on a specific information sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If such a business violates any of these laws, it loses eligibility for business identification on a specific information sign.

(3) No business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may be eligible for business identification on a specific information sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131.

History: En. Sec. 6, Ch. 537, L. 1989.

60-5-515 through 60-5-518 reserved.

60-5-519. Tourist-oriented directional signs within right-of-way of primary highway system. (1) Tourist-oriented directional signs may be erected and maintained within the right-of-way of the primary highway system to provide information to the traveling public concerning motorist services accessible from the primary highway system by way of an intersecting highway.

(2) Except as provided by rule, a tourist-oriented directional sign may not be erected if the place of business is readily visible from the main-traveled roadway.

History: En. Sec. 7, Ch. 537, L. 1989.

Cross-References

Outdoor advertising prohibited — exceptions, 75-15-111.

60-5-520. Tourist-oriented directional signs — number of business signs — distances. (1) The number of tourist-oriented directional signs is limited to three signs on an approach to an intersection.

(2) No more than four business signs may be installed on a tourist-oriented directional sign.

(3) To qualify for business identification on a tourist-oriented sign, a business shall meet the eligibility criteria established in 60-5-522 and may not be located more than 5 miles from the primary highway, except as otherwise permitted by the department if no eligible business is located within the 5-mile limit.

History: En. Sec. 8, Ch. 537, L. 1989.

60-5-521. Sign composition — design — conformity with standards and rules. (1) A tourist-oriented directional sign must be rectangular in shape and must have a white legend and border on a blue background.

(2) A tourist-oriented directional sign may contain standard general service symbols to indicate a class of business, service, or activity.

(3) Business signs for specific businesses, services, and activities may be installed on a tourist-oriented directional sign. Nationally, regionally, or locally known commercial symbols, brands, or trademarks for service stations, restaurants, campgrounds, and motels must be used when applicable. Such commercial symbols, brands, and trademarks must be reduced to an appropriate size. No business sign may resemble any official warning or regulatory traffic sign, signal, or device.

(4) A tourist-oriented directional sign may contain no more than two lines of legend, including no more than one business sign, a separate directional arrow, and the distance to the specific business, service, or activity.

(5) The content of the legend must be limited to the identification of the business, service, or activity. The legend may not include promotional advertising.

(6) The legends, arrows, and business signs displayed on a tourist-oriented directional sign may be reflectorized.

(7) The erection and maintenance of tourist-oriented directional signs must conform to national standards promulgated by the U.S. secretary of transportation pursuant to 23 U.S.C. 131 and 23 U.S.C. 315 and rules adopted by the department under 60-5-503.

History: En. Sec. 9, Ch. 537, L. 1989.

60-5-522. Business eligibility — criteria — restrictions. (1) To be eligible for business identification on a tourist-oriented directional sign, a business establishment shall meet the following standards for a business, service, or activity:

(a) Gas, food, lodging, and camping services must:

(i) be licensed and approved by the state and local agencies regulating the particular type of business;

(ii) provide an acceptable level of service to the public;

(iii) be in continuous operation at least 8 hours a day, 5 days a week, including Saturday or Sunday; and

(iv) have a telephone and restroom facilities available for public use.

(b) Recreation services must:

(i) be licensed and approved by state and local agencies as required by law;

(ii) provide to families and the public activities of interest in which people participate for purposes of physical exercise, collective amusement, or enjoyment of nature. Such activities may include hiking, golfing, skiing, boating, swimming, picnicking, fishing, and horseback riding.

(c) Tourist services must:

(i) be licensed as required by law;

(ii) be open to the public at least 8 hours a day, 5 days a week, including Saturday or Sunday, during the normal tourist season; and

(iii) provide a natural, recreational, historical, cultural, educational, or entertainment activity or a unique or unusual commercial or nonprofit activity, from which the major portion of income or visitors is derived during normal business seasons from motorists not residing in the immediate area of the activity.

(2) (a) Each business identified on a tourist-oriented directional sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If a business violates any of these laws, it loses eligibility for business identification on a tourist-oriented directional sign.

(3) No business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may be eligible for business identification on a tourist-oriented directional sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131.

History: En. Sec. 10, Ch. 537, L. 1989.

60-5-523 through 60-5-525 reserved.

60-5-526. Restrictions. The department may take no action under this part that may result in the loss to the state of any federal highway construction funds.

History: En. Sec. 16, Ch. 537, L. 1989.

60-5-527. Federal requirements — conflict and accord. If the secretary of the U.S. department of transportation finds any part of this part to be in conflict with federal requirements that are prescribed as a condition to the allocation of federal funds to the state, the conflicting part of this part is invalid only to the extent of the conflict and such finding may not affect the operation of the remainder of this part in its valid applications.

History: En. Sec. 17, Ch. 537, L. 1989.

Cross-References

Purposes for which federal funds to be expended, 60-3-103.

CHAPTER 6

HIGHWAY ENCROACHMENTS

Part 1 — Removal of Encroachments by State Authorities

60-6-101. Highway encroachments — immediate removal.
60-6-102. Notice of encroachment.
60-6-103. Time limit for removal — penalty.
60-6-104. Denial of encroachment — department action.
60-6-105. Removal at owner's expense when not denied.

Chapter Cross-References

Power to construct works across roads and other obstacles, 7-13-2219.

Right-of-way across state lands, 7-13-2220.

Powers of rural cooperative utilities, 35-18-106.

Roadblocks, Title 46, ch. 5, part 5.

Removal of unauthorized signs, 61-8-706.

Use of public right-of-way for utility lines and facilities, 69-4-101.

Right to construct pipelines across highway, 69-13-103, 69-13-104.

Railroad crossings of roads and streams, 69-14-535.

Railroad highway crossings, Title 69, ch. 14, part 6.

Outdoor Advertising Act, Title 75, ch. 15, part 1.

Reduction of slash and debris along right-of-way, 76-13-407.

Part 1

Removal of Encroachments by State Authorities

60-6-101. Highway encroachments — immediate removal. (1) If any highway under the jurisdiction of the highway commission is encroached upon by a fence, building, structure, sign, marker, mailbox, newspaper delivery box, or other obstruction, the department of transportation may give notice in writing to the person erecting or maintaining such encroachment requiring the same to be removed.

(2) The department shall adopt rules pertaining to the accommodation of mailboxes and newspaper delivery boxes on public highway rights-of-way. The rules must ensure that the location and construction of mailboxes and newspaper delivery boxes conform to the rules and regulations of the U.S. postal service.

(3) If the encroachment obstructs and prevents the use of the highway for vehicles, the department may immediately remove the same without the notice required by 60-6-102.

History: En. 32-4411 by Sec. 1, Ch. 231, L. 1975; R.C.M. 1947, 32-4411; amd. Sec. 1, Ch. 287, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 287 in (1), after "marker", inserted "mailbox, newspaper delivery box"; and inserted (2) requiring adoption of rules regarding mailboxes and newspaper delivery boxes on public highway rights-of-way.

Chapter 512 in (1) substituted reference to Department of Transportation for reference to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Notice — actual and constructive, 1-1-217.

Display of unauthorized signs, signals, or markings, 61-8-210.

60-6-102. Notice of encroachment. (1) Notice to remove the encroachment, specifying the width of the highway right-of-way and the place and extent of the encroachment, must be given to the person erecting or maintaining such encroachment.

(2) Notice must be given in the following manner:

(a) in writing by certified mail sent to the person's business or personal address or by personal service;

(b) if such address cannot be found, by posting it on the encroachment.

History: En. 32-4412 by Sec. 2, Ch. 231, L. 1975; R.C.M. 1947, 32-4412.

Cross-References

Civil procedure — "notice" defined, 25-3-101.

"Right-of-way" defined, 60-1-103.

60-6-103. Time limit for removal — penalty. If the encroachment is not permanently affixed to the land, such encroachment shall be removed from the right-of-way within 2 days after receipt of the notice. If such an encroachment remains on the right-of-way after this period of time, the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal.

History: En. 32-4413 by Sec. 3, Ch. 231, L. 1975; R.C.M. 1947, 32-4413.

60-6-104. Denial of encroachment — department action. If the encroachment is denied, the department shall commence appropriate legal action to have said encroachment removed. If the department recovers a judgment, it shall have its costs. If the encroachment is not removed within 5 days after entry of judgment, the department may remove it at the expense of the person who causes, owns, or controls it.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(1).

Cross-References

Civil procedure — costs, Title 25, ch. 10.

60-6-105. Removal at owner's expense when not denied. If an encroachment affixed to the land is not denied and is not removed within 5 days after receipt of the notice, the department may remove it at the expense of the person who causes, owns, or controls it. The department may recover the expense of removal and costs in an action brought for that purpose.

History: En. 32-4414 by Sec. 4, Ch. 231, L. 1975; R.C.M. 1947, 32-4414(2).

Cross-References

Civil procedure — costs, Title 25, ch. 10.

CHAPTER 7

LIVESTOCK ON HIGHWAYS

Part 1 — Fencing of Open Range

60-7-101. Purpose.
60-7-102. Definitions.
60-7-103. Department to fence right-of-way through open range.

Part 2 — Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful.
60-7-202. Exclusions.
60-7-203. Penalty.
60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways.
60-7-205. Violations.

Chapter Cross-References
Containment of livestock, Title 81, ch. 4.

Part 1

Fencing of Open Range

Part Cross-References
"Open range" defined, 81-4-203.

60-7-101. Purpose. It is the purpose of 60-7-101 through 60-7-103 to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.

History: En. 32-2425.1 by Sec. 1, Ch. 255, L. 1974; R.C.M. 1947, 32-2425.1.

60-7-102. Definitions. As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply:

(1) "Open range" means those areas of the state where livestock is raised and maintained in sufficient numbers as to constitute a significant part of the local or county economy and where such animals graze and move about generally unrestrained by fences.

(2) A "high-hazard area" is a segment of the primary highway system passing through open range where livestock moves on or across the highway often enough, in enough numbers, and with enough ease of access that such animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by ex-

perience to evaluate the relative safety of road conditions, and the terrain around the road.

(3) A "low-hazard area" is a segment of the primary highway system passing through open range which is not a high-hazard area.

(4) "Livestock" means cattle, sheep, swine, horses, mules, and goats.

History: En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; R.C.M. 1947, 32-2426(2).

60-7-103. Department to fence right-of-way through open range. (1) The department shall fence the right-of-way of any part of the state highway system that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. Where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) The department shall erect a fence in every high-hazard area as promptly as possible, and the cost of such construction is an expenditure for the enforcement of federal-aid highway safety programs. Gates, stock underpasses, water facilities, and cattle guards may be installed where necessary to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway.

History: (1)En. Sec. 1, Ch. 311, L. 1969; amd. Sec. 2, Ch. 255, L. 1974; amd. Sec. 91, Ch. 316, L. 1974; Sec. 32-2426, R.C.M. 1947; (2)En. 32-2429 by Sec. 5, Ch. 255, L. 1974; Sec. 32-2429, R.C.M. 1947; R.C.M. 1947, 32-2426(1), 32-2429.

Cross-References

"Right-of-way" defined, 60-1-103.

"Legal fence" defined, 81-4-101.

Construction of auto pass not to deprive legal fence of character, 81-4-102.

Part 2

Grazing of Livestock on Highways

60-7-201. Grazing livestock on highway unlawful. A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of:

(1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the highway commission and the secretary of transportation as a part of the national system of interstate and defense highways; or

(2) a state highway designated by agreement between the highway commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60-7-202.

History: En. Sec. 1, Ch. 95, L. 1951; amd. Sec. 1, Ch. 186, L. 1961; Sec. 32-1018, R.C.M. 1947; amd. and redes. 32-21-176 by Sec. 7, Ch. 316, L. 1974; R.C.M. 1947, 32-21-176.

Cross-References

"Federal-aid highway systems" defined, 60-1-103.

60-7-202. Exclusions. Section 60-7-201 does not apply to the following:

(1) livestock on state highways under the charge of one or more herders;

(2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock;

(3) the parts of a state highway or a part of the federal-aid primary system which the department of transportation designates as being impracticable to exclude livestock. These portions of the highway shall be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic-control devices.

History: En. Sec. 2, Ch. 95, L. 1951; amd. Sec. 2, Ch. 186, L. 1961; Sec. 32-1019, R.C.M. 1947; amd. and redes. 32-21-177 by Sec. 8, Ch. 316, L. 1974; R.C.M. 1947, 32-21-177; amd. Sec. 24, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

60-7-203. Penalty. A person who violates 60-7-201 is guilty of a misdemeanor and is subject to a fine of not less than $5 or more than $100 for each offense. In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

History: En. Sec. 3, Ch. 95, L. 1951; amd. Sec. 3, Ch. 186, L. 1961; Sec. 32-1020, R.C.M. 1947; amd. and redes. 32-21-178 by Sec. 9, Ch. 316, L. 1974; R.C.M. 1947, 32-21-178.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

60-7-204. Flagmen escorts — prohibitions against nighttime herding on public highways. A person who owns, controls, or possesses livestock may not herd or drive a herd of livestock numbering more than 10 on an interstate or state primary highway designated as such by the highway commission unless the livestock is preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the flagmen escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967; Sec. 32-1021, R.C.M. 1947; amd. and redes. 32-21-179 by Sec. 10, Ch. 316, L. 1974; R.C.M. 1947, 32-21-179.

Cross-References
"Flag person" defined, 61-1-411.
"Flag vehicle" defined, 61-1-412.

60-7-205. Violations. A person who violates 60-7-204 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967; Sec. 32-1022, R.C.M. 1947; amd. and redes. 32-21-180 by Sec. 11, Ch. 316, L. 1974; R.C.M. 1947, 32-21-180.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
When no penalty specified, 46-18-212.

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

RAIL TRANSPORTATION

Part 1 — General Provisions

60-11-101. Rail planning.
60-11-102 through 60-11-109 reserved.
60-11-110. Abandonment defined.
60-11-111. Identification and acquisition of railroad rights-of-way.
60-11-112. Definitions.
60-11-113 through 60-11-120 reserved.
60-11-121. Legislative findings.
60-11-122. Special railroad facilities account.
60-11-123. Disposition of revenue from state-owned railroads — use of money.

Part 2 — Rail Passenger Service

60-11-201. Agreements for rail passenger service application.

Parts 3 through 10 reserved

Part 11 — Railroad Rehabilitation Revenue Bonds

60-11-1101. Intent.
60-11-1102. Definitions.
60-11-1103. Railroad rehabilitation revenue bonds.
60-11-1104. Bond details.
60-11-1105. Bond limitations.
60-11-1106. Bond covenants.
60-11-1107. Bond accounts — appropriation.
60-11-1108. Financial administration.
60-11-1109. Refunding bonds.

60-11-1110. Tax exemption.
60-11-1111. Use of bond proceeds.
60-11-1112. Loan details.
60-11-1113. Administration of loans.

Part 12 — Rolling Stock Revenue Bonds

60-11-1201. Intent.
60-11-1202. Definitions.
60-11-1203. Railroad rolling stock revenue bonds.
60-11-1204. Bond details.
60-11-1205. Bond limitations.
60-11-1206. Bond covenants.
60-11-1207. Bond accounts — appropriation.
60-11-1208. Financial administration.
60-11-1209. Refunding bonds.
60-11-1210. Tax exemption.
60-11-1211. Use of bond proceeds.
60-11-1212. Loan details.
60-11-1213. Administration of loans.

Chapter Cross-References

Railroads, Title 69, ch. 14.

Part 1

General Provisions

60-11-101. Rail planning. The department of transportation may administer rail planning activities.

History: En. Sec. 1, Ch. 324, L. 1979; amd. Sec. 16, Ch. 274, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.

60-11-102 through 60-11-109 reserved.

60-11-110. Abandonment defined. For purposes of this part, "abandonment" means the relinquishment of property, both real and personal, and the discontinuance of railroad services. Abandonment may be accomplished by voluntary act or by formal procedure.

History: En. Sec. 1, Ch. 591, L. 1987.

Cross-References

Privilege tax on gainful use of tax-exempt property — exception for state-acquired railroad property, 15-24-1203.

Duty to furnish shipping and passenger facilities, 69-14-202.

Sale or transfer of railroad line, Title 69, ch. 14, part 11.

60-11-111. Identification and acquisition of railroad rights-of-way. (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsection (2)(a);

(c) may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection (2)(a) and:

(i) hold all such acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to such local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection (2)(c); and

(d) shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds.

(3) Abandoned rights-of-way acquired and held in trust pursuant to subsection (2)(c)(i) must be administered by the department of state lands as prescribed in Title 77, until such time as the land is needed for transportation purposes.

History: En. Secs. 1, 2, Ch. 653, L. 1983; amd. Sec. 1, Ch. 564, L. 1985; amd. Sec. 2, Ch. 509, L. 1991; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 509 inserted (2)(d) relating to Department assistance to others in acquiring ownership or easement of abandoned railbeds; and made minor changes in style.

Chapter 512 in (2) substituted reference to Department of Transportation for reference to Department of Commerce. Amendment effective July 1, 1991.

Cross-References

Department of Commerce established, 2-15-1801.

Powers and duties of Department of State Lands, 77-1-301.

60-11-112. Definitions. As used in 60-11-111, the following definitions apply:

(1) "Railbed" means the fee or lessor interest in the land 8.5 feet to either side of the centerline of the railroad track.

(2) "Recreational interest" means a local government or a not-for-profit corporation that has as its stated purpose the development, use, or maintenance of public recreational trails.

History: En. Sec. 1, Ch. 509, L. 1991.

60-11-113 through 60-11-120 reserved.

60-11-121. Legislative findings. The legislature finds that it is in the interests of the state of Montana to preserve and encourage, whenever possible, Montana's railroad transportation infrastructure, especially those railroads classified as Class III carriers under 49 CFR, chapter 10, that operate mainly within the state.

History: En. Sec. 1, Ch. 513, L. 1991.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 513, L. 1991, provided: "[This act] is effective on passage and approval [approved April 20, 1991] and applies to all money received pursuant to [section 3(1)] [60-11-123(1)] after [the effective date of this act] [effective April 20, 1991]."

60-11-122. Special railroad facilities account. There is a special railroad facilities account in the state special revenue fund.

History: En. Sec. 2, Ch. 513, L. 1991.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 513, L. 1991, provided: "[This act] is effective on passage and approval [approved April 20, 1991] and applies to all money received pursuant to [section 3(1)] [60-11-123(1)] after [the effective date of this act] [effective April 20, 1991]."

60-11-123. Disposition of revenue from state-owned railroads — use of money. (1) Unless otherwise required by law, revenue from the lease or sale of assets of or revenue paid to the state of Montana by an operator of a railroad owned by the state of Montana must be deposited in the special railroad facilities account created in 60-11-122.

(2) The department of transportation is authorized to administer, as provided in 60-11-121 through 60-11-123, the special railroad facilities account created in 60-11-122 to provide for improvement of railroad tracks and associated facilities of any state-owned railroad in Montana.

History: En. Sec. 3, Ch. 513, L. 1991.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 513, L. 1991, provided: "[This act] is effective on passage and approval [approved April 20, 1991] and applies to all money received pursuant to [section 3(1)] [60-11-123(1)] after [the effective date of this act] [effective April 20, 1991]."

Part 2

Rail Passenger Service

60-11-201. Agreements for rail passenger service application. The governor or his authorized representative may negotiate with the proper authority representing any other state to establish an agreement to enable Montana, in concert with other states, to submit an application to the rail passenger corporation for institution of rail passenger service under the provisions of the Rail Passenger Service Act (45 U.S.C. 563(b)) or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger service in the state. The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature. However, the governor or his authorized representative may enter into agreements to expand Amtrak rail passenger service under 45 U.S.C. 563(b), as that statute reads on July 1, 1985, subject to appropriation by the legislature.

History: En. Sec. 1, Ch. 498, L. 1981; amd. Sec. 1, Ch. 306, L. 1985.

Cross-References

Powers and duties of Governor, 2-15-201.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

Duty to furnish shipping and passenger facilities, 69-14-202.

Transportation of passengers and property, 69-14-558.

Parts 3 through 10 reserved

Part 11

Railroad Rehabilitation Revenue Bonds

60-11-1101. Intent. It is the intent of the legislature to provide a mechanism for the rehabilitation of railroad tracks and associated facilities in Montana and thereby to strengthen the rail transportation system of Montana and the state's economy.

History: En. Sec. 1, Ch. 564, L. 1979.

Cross-References

Provision of adequate accommodations and service, 69-14-117.

60-11-1102. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rehabilitation revenue bonds authorized by 60-11-1103.

(2) "Department" means the department of transportation.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rehabilitation project" means a business undertaking to repair, improve, or replace rail facilities to improve the safety and efficiency of the facilities and to derive revenue.

(5) "Rail facilities" means the line of track of a railroad, including spurs and extensions, and associated facilities, including but not limited to freight and commodities, storage and loading facilities, signal and switching systems, roadbeds, and machinery and equipment designed for rail maintenance, but

the term does not include engines or rolling stock used for the transport of goods or passengers.

(6) "Refunding bonds" means railroad rehabilitation refunding revenue bonds authorized by 60-11-1109.

History: En. Sec. 2, Ch. 564, L. 1979; amd. Sec. 1, Ch. 486, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

60-11-1103. Railroad rehabilitation revenue bonds. (1) The department is authorized to issue and sell railroad rehabilitation revenue bonds under the provisions of this part. The department of administration shall assist the department in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rehabilitation projects.

History: En. Sec. 3, Ch. 564, L. 1979; amd. Sec. 66, Ch. 83, L. 1989.

Cross-References

Public bond issues, Title 17, ch. 5.

60-11-1104. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices above or below par as determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;
(b) the interest rate;
(c) the denominations;
(d) whether coupon or registered bonds;
(e) the manner, medium, and place of payment;
(f) whether redeemable or not and if redeemable, the manner of redemption;
(g) bond covenants.

History: En. Sec. 4, Ch. 564, L. 1979; amd. Sec. 2, Ch. 486, L. 1981.

60-11-1105. Bond limitations. (1) The interest rate or rates on the bonds shall be determined by the department. The total amount of bonds outstanding at any one time may not exceed $25 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

History: En. Sec. 5, Ch. 564, L. 1979; amd. Sec. 3, Ch. 486, L. 1981.

Cross-References

Bonds — rates of interest, Title 17, ch. 5, part 1.

60-11-1106. Bond covenants. The department may enter into covenants with the bondholders by resolution, trust indenture, or other appropriate security instrument to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds.

History: En. Sec. 6, Ch. 564, L. 1979; amd. Sec. 4, Ch. 486, L. 1981.

60-11-1107. Bond accounts — appropriation. (1) There is a railroad rehabilitation account in the state special revenue fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rehabilitation account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rehabilitation reserve debt service fund as provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rehabilitation reserve debt service fund, and all money deposited in the debt service fund is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1106, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts notwithstanding the provisions of subsections (1) and (2).

History: En. Sec. 7, Ch. 564, L. 1979; amd. Sec. 5, Ch. 486, L. 1981; amd. Sec. 27, Ch. 298, L. 1983.

Cross-References

Fund structure, 17-2-102.

60-11-1108. Financial administration. The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

History: En. Sec. 8, Ch. 564, L. 1979.

60-11-1109. Refunding bonds. (1) The department may issue railroad rehabilitation refunding revenue bonds. These bonds are subject to the same provisions as the railroad rehabilitation revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

History: En. Sec. 9, Ch. 564, L. 1979.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

60-11-1110. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

History: En. Sec. 10, Ch. 564, L. 1979.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

60-11-1111. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons for financing rehabilitation projects on rail lines in Montana.

(2) The revenue from the project shall be used for repayment of the loan.

History: En. Sec. 11, Ch. 564, L. 1979.

60-11-1112. Loan details. The terms of any loan made pursuant to 60-11-1111 shall be specified by the department and shall be such as to assure sufficient payments to meet the obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the project or other property of the borrower.

History: En. Sec. 12, Ch. 564, L. 1979; amd. Sec. 6, Ch. 486, L. 1981.

60-11-1113. Administration of loans. (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by 60-11-1111. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans must be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

History: En. Sec. 13, Ch. 564, L. 1979.

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

Part 12

Rolling Stock Revenue Bonds

Part Cross-References

Public bond issues, Title 17, ch. 5.

60-11-1201. Intent. It is the intent of the legislature to provide a mechanism to alleviate the shortage of railroad rolling stock in Montana and to stimulate the economy of the state by strengthening the rail transportation system and by providing jobs for more Montanans.

History: En. Sec. 1, Ch. 565, L. 1979.

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

60-11-1202. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Bonds" means railroad rolling stock revenue bonds authorized by 60-11-1203.

(2) "Department" means the department of transportation.

(3) "Person" means an individual or a partnership, association, corporation, or other business entity.

(4) "Project" or "rolling stock project" means a business undertaking to manufacture, repair, purchase, or lease rolling stock and to subsequently use, sell, or lease the rolling stock to derive revenue.

(5) "Railroad rolling stock" or "rolling stock" means railroad cargo carriers used to transport grain, coal, ore, lumber, freight, and commodities.

(6) "Refunding bonds" means railroad rolling stock refunding revenue bonds authorized by 60-11-1209.

History: En. Sec. 2, Ch. 565, L. 1979; amd. Sec. 7, Ch. 486, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

60-11-1203. Railroad rolling stock revenue bonds. (1) The department is authorized to issue and sell railroad rolling stock revenue bonds under the provisions of this part. The department of administration shall assist the department in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or

assets of the department acquired or held in connection with rolling stock projects.

History: En. Sec. 3, Ch. 565, L. 1979; amd. Sec. 67, Ch. 83, L. 1989.

60-11-1204. Bond details. (1) The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. A bond may not mature more than 50 years from its date of issue. The amount to be issued and sold at any one time shall be determined by the department. The bonds may be sold at either public or private sale and at prices above or below par as determined by the department.

(2) At the time of issuance of the bonds, the department shall specify the bond details, including but not limited to:

(a) whether serial, term, or combination thereof;

(b) the interest rate;

(c) the denominations;

(d) whether coupon or registered bonds;

(e) the manner, medium, and place of payment;

(f) whether redeemable or not and if redeemable, the manner of redemption;

(g) bond covenants.

History: En. Sec. 4, Ch. 565, L. 1979; amd. Sec. 8, Ch. 486, L. 1981.

60-11-1205. Bond limitations. (1) The interest rate or rates on the bonds shall be determined by the department. The total amount of bonds outstanding at any one time may not exceed $75 million.

(2) Each bond must have printed on its face a statement that the state is not liable on the bond, the bond is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bond.

History: En. Sec. 5, Ch. 565, L. 1979; amd. Sec. 9, Ch. 486, L. 1981.

Cross-References

Bonds — rates of interest, Title 17, ch. 5, part 1.

60-11-1206. Bond covenants. The department may enter into covenants with the bondholders by resolution, trust indenture, or other appropriate instrument to enhance the marketability of the bonds. These covenants may relate to:

(1) the purpose to which the bond proceeds are to be applied;

(2) the use and disposition of the revenue of a project to which the bond proceeds are to be applied;

(3) the issuance of additional bonds to be paid from revenue of a project to which the bond proceeds are to be applied;

(4) the insurance to be carried on a project to which bond proceeds are to be applied;

(5) the accounting procedures and auditing powers related to a project;

(6) the terms and conditions upon which the bondholders are entitled to have a receiver appointed to operate a project to which bond proceeds are to be applied;

(7) the maintenance of a required capital reserve;

(8) the granting of a mortgage and security interest in the project and other properties of the borrower to secure the bonds;

(9) such other matters as the department considers customary and appropriate to secure the bonds.

History: En. Sec. 6, Ch. 565, L. 1979; amd. Sec. 10, Ch. 486, L. 1981.

60-11-1207. Bond accounts — appropriation. (1) There is a railroad rolling stock account in the state special revenue fund provided for in 17-2-102. All bond proceeds shall be placed in the railroad rolling stock account, and all money deposited in the account is continuously appropriated to the department and may be expended by the department for the purposes authorized in this part.

(2) There is a railroad rolling stock debt service fund as provided for in 17-2-102. Loan repayments and required capital reserves shall be deposited in the railroad rolling stock fund, and all money deposited in the fund is continuously appropriated to the department and may be expended for the payment of principal and interest on the bonds as they become due.

(3) If the department enters into a trust indenture pursuant to 60-11-1206, it may provide for the establishment of funds and accounts to be held by the trustee and may pledge and appropriate the bond proceeds, capital reserves, and loan payments to such funds and accounts, notwithstanding the provisions of subsections (1) and (2).

History: En. Sec. 7, Ch. 565, L. 1979; amd. Sec. 11, Ch. 486, L. 1981; amd. Sec. 28, Ch. 281, L. 1983.

Cross-References

Fund structure, 17-2-102.

60-11-1208. Financial administration. The department shall institute strict accounting procedures and take whatever steps are required by the federal government in the financial administration of bond proceeds and loan accounts.

History: En. Sec. 8, Ch. 565, L. 1979.

60-11-1209. Refunding bonds. (1) The department may issue railroad rolling stock refunding revenue bonds. These bonds are subject to the same provisions as the railroad rolling stock revenue bonds.

(2) Refunding bonds may be sold or exchanged for outstanding bonds. The proceeds may be applied to the purchase, redemption, or repayment of outstanding bonds, and if not prevented by agreement with the bondholders, the proceeds may be invested as provided in Title 17, chapter 6, pending use of the proceeds for the purchase, redemption, or repayment of outstanding bonds.

History: En. Sec. 9, Ch. 565, L. 1979.

Cross-References

Refunding bonds, Title 17, ch. 5, part 3.

60-11-1210. Tax exemption. Bonds and refunding bonds, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or instrumentality of the state, except for inheritance and estate taxes.

History: En. Sec. 10, Ch. 565, L. 1979.

Cross-References

Inheritance and estate taxes, Title 72, ch. 16.

60-11-1211. Use of bond proceeds. (1) The proceeds of the bonds shall be used by the department to make loans to persons doing business or resident in Montana for financing rolling stock projects when the rolling stock is to be based in Montana and used primarily for the transport of grain, coal, ore, lumber, freight, and commodities produced in Montana.

(2) The revenue from the sale or use of the rolling stock shall be used for repayment of the loans.

History: En. Sec. 11, Ch. 565, L. 1979; amd. Sec. 12, Ch. 486, L. 1981.

Cross-References

Economic development bonds, Title 17, ch. 5, part 15.

60-11-1212. Loan details. The terms of any loan made pursuant to 60-11-1211 shall be specified by the department and shall be such as to assure sufficient payments to enable the department to meet its obligations on the bonds. Any terms required under an agreement with the bondholder must be included in the loan agreement. The department may require the borrower to secure the loan with the project or other property of the borrower.

History: En. Sec. 12, Ch. 565, L. 1979; amd. Sec. 13, Ch. 486, L. 1981.

60-11-1213. Administration of loans. (1) The department shall develop forms and application procedures to enable a person to secure a loan authorized by 60-11-1211. Loans may only be made to persons the department determines to be capable of repaying the loan. The department shall develop criteria for this determination.

(2) Preference in making loans shall be given to persons who intend to use the loan proceeds in such a manner as to create new jobs in Montana.

(3) The loan agreement may provide for a reduction in loan interest with the reduction proportional to the amount of time the rolling stock is located in Montana. The interest rate may not be reduced below the level required to meet obligations on the bonds or required by agreement with the bondholders.

History: En. Sec. 13, Ch. 565, L. 1979.

CHAPTERS 12 THROUGH 20

RESERVED

CHAPTER 21

PUBLIC TRANSPORTATION

Part 1 — General Provisions

60-21-101. Department of transportation authorized to represent the state on public transportation issues.

Part 1

General Provisions

60-21-101. Department of transportation authorized to represent the state on public transportation issues. The department of transportation may represent the state of Montana on any issue relating to any mode of public transportation in any judicial or administrative forum of this state, any other state, or the United States.

History: En. Sec. 1, Ch. 92, L. 1983; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

Cross-References

Local government — transportation, Title 7, ch. 14.

Traffic regulation, Title 61, ch. 8.

Motor vehicles, size — weight — load, Title 61, ch. 10.

Air operators and air carriers, Title 67, ch. 3, part 4.

Regulation of carriers, Title 69, ch. 11.

Regulation of motor carriers, Title 69, ch. 12.

Railroads — role of Public Service Commission, Title 69, ch. 14, part 1.

TITLE 61

MOTOR VEHICLES

Ch.
1. Definitions.
2. Highway Safety.
3. Certificates of Ownership, Registration, and Taxation of Motor Vehicles.
4. Sales and Distribution of Motor Vehicles.
5. Drivers' Licenses.
6. Responsibility of Vehicle Users and Owners.
7. Accidents and Accident Reports.
8. Traffic Regulation.
9. Vehicle Equipment.
10. Size — Weight — Load.
11. Records and Reports of Convictions.
12. Miscellaneous Provisions.
13. Seatbelts.

Title Cross-References
Highways, Title 60.

CHAPTER 1

DEFINITIONS

Part 1 — Vehicles

61-1-101. Definitions.
61-1-102. Motor vehicle.
61-1-103. Vehicle.
61-1-104. Special mobile equipment.
61-1-105. Motorcycle.
61-1-106. Motor-driven cycle.
61-1-107. Truck.
61-1-108. Truck tractor.
61-1-109. Farm tractor.
61-1-110. Road tractor.
61-1-111. Trailer.
61-1-112. Semitrailer.
61-1-113. Dolly or converter gear.
61-1-114. Pole trailer.
61-1-115. Bus.
61-1-116. School bus.
61-1-117. Used motor vehicle.
61-1-118. Police vehicle.
61-1-119. Authorized emergency vehicles.
61-1-120. Emergency service vehicles.
61-1-121. Implement of husbandry.
61-1-122. Trackless trolley coach.
61-1-123. Bicycle.

61-1-124. Railroad train.
61-1-125. Pneumatic tire.
61-1-126. Solid tire.
61-1-127. Metal tire.
61-1-128. Axle.
61-1-129. Camper.
61-1-130. Motor home.
61-1-131. Travel trailer.
61-1-132. Recreational vehicle.
61-1-133. Quadricycle.
61-1-134. Commercial motor vehicle defined — exceptions.
61-1-135. Commercial vehicle operator's endorsement.
61-1-136. Driver's license.
61-1-137. Hazardous material.
61-1-138. Van.

Part 2 — Roads

61-1-201. Highway.
61-1-202. Public highway.
61-1-203. Street.
61-1-204. Arterial street.
61-1-205. Private road or driveway.
61-1-206. Roadway.
61-1-207. Laned roadway.
61-1-208. Sidewalk.
61-1-209. Crosswalk.
61-1-210. Through highway.
61-1-211. Controlled-access highway.
61-1-212. Intersection.

Part 3 — Persons—Agencies

61-1-301. Department.
61-1-302. Chief.
61-1-303. Commission.
61-1-304. Police officer.
61-1-305. Highway patrol officer.
61-1-306. Local authorities.
61-1-307. Person.
61-1-308. Pedestrian.
61-1-309. Driver.
61-1-310. Owner.
61-1-311. Operator.
61-1-312. Repealed.
61-1-313. Nonresident.
61-1-314. Dealer.
61-1-315. Trailer dealer.
61-1-316. Manufacturer.
61-1-317. Railroad.
61-1-318. Broker.
61-1-319. Wholesaler.

Part 4 — Traffic Control

61-1-401. Traffic.
61-1-402. Traffic-control signal.
61-1-403. Official traffic-control devices.
61-1-404. Railroad sign or signal.
61-1-405. Safety zone.
61-1-406. Right-of-way.
61-1-407. Stop, stopping, standing, and parking.

61-1-408. Business district.
61-1-409. Residence district.
61-1-410. Urban district.
61-1-411. Flag person.
61-1-412. Flag vehicle.
61-1-413. Funeral escort vehicle.
61-1-414. Funeral lead vehicle.
61-1-415. Funeral procession.

Part 5 — Miscellaneous

61-1-501. Housetrailer.
61-1-502. Gross weight.
61-1-503. Suspension.
61-1-504. Revocation.
61-1-505. Cancellation.
61-1-506. Explosives.
61-1-507. Flammable liquid.
61-1-508. Registration.
61-1-509. Certificate of ownership.

Part 1

Vehicles

61-1-101. Definitions. Unless the context indicates otherwise, the words and phrases defined in this chapter have, as used in this title, the meanings respectively ascribed to them in this chapter.

History: En. Sec. 2, Ch. 267, L. 1947; R.C.M. 1947, 31-118; amd. Sec. 1, Ch. 421, L. 1979.

61-1-102. Motor vehicle. "Motor vehicle" means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state, except that for the purpose of chapter 3, the term also includes trailers, semitrailers, and housetrailers. For the purpose of chapter 3, parts 1 and 2, the term also includes campers. The term does not include a bicycle as defined in 61-1-123.

History: Ap.p. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; Ap.p. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 53-107(part); amd. Sec. 2, Ch. 421, L. 1979; amd. Sec. 2, Ch. 508, L. 1979; amd. Sec. 1, Ch. 715, L. 1991.

Compiler's Comments

1991 Amendment: Inserted second sentence concerning campers; and made minor changes in style.

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

Cross-References

Retail installment sales — "motor vehicle" defined, 31-1-202.

Criminal trespass to vehicles, 45-6-202.

Vehicles subject to staggered registration, 61-3-313.

Required motor vehicle insurance, 61-6-301.

61-1-103. Vehicle. "Vehicle" means every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by animal power or used exclusively upon stationary rails or tracks. However, in chapters 3 and 4, the term means "motor vehicle" as defined in this part; and in chapter 8, part 4, this term does not include a bicycle as defined in 61-1-123.

History: Ap.p. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 31-119(a), 53-133(i); amd. Sec. 3, Ch. 421, L. 1979; amd. Sec. 3, Ch. 508, L. 1979; amd. Sec. 1, Ch. 450, L. 1983; amd. Sec. 1, Ch. 99, L. 1985.

Cross-References

Criminal trespass to vehicles, 45-6-202.

61-1-104. Special mobile equipment. "Special mobile equipment" means every vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction or maintenance machinery, ditch-digging apparatus, well-boring apparatus, and concrete mixers. The foregoing enumeration is partial and does not exclude other such vehicles which are within the general terms of this section.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(j); amd. Sec. 4, Ch. 421, L. 1979.

Cross-References

General assessment day, 15-8-201.

Vehicles subject to staggered registration, 61-3-313.

Special mobile equipment — exemption from registration, 61-3-431.

Application for dealer's license, 61-4-101.

Service brakes — adequacy, 61-9-302.

Brakes required on all wheels — exceptions, 61-9-304.

61-1-105. Motorcycle. "Motorcycle" means a motor vehicle having not more than three wheels in contact with the ground and a saddle on which the operator sits or a platform on which he stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself. A motorcycle may carry one or more attachments and a seat for the conveyance of a passenger. The term does not include a tractor or a bicycle as defined in 61-1-123.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(b); amd. Sec. 5, Ch. 421, L. 1979; amd. Sec. 4, Ch. 508, L. 1979.

Cross-References

Headgear required for minor motorcycle riders, 61-9-417.

Motorcycle noise suppression devices, 61-9-418.

Violation of motorcycle requirements — penalty, 61-9-518.

61-1-106. Motor-driven cycle. "Motor-driven cycle" means every motorcycle, including every motor scooter, with a motor which produces not to exceed 5 horsepower. The term does not include a bicycle as defined in 61-1-123.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(d); amd. Sec. 5, Ch. 508, L. 1979.

61-1-107. Truck. "Truck" or "motortruck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

History: En. Sec. 4, Ch. 263, L. 1955; R.C.M. 1947, 32-2104(a); amd. Sec. 6, Ch. 421, L. 1979.

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-108. Truck tractor. "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

History: En. Sec. 3, Ch. 263, L. 1955; R.C.M. 1947, 32-2103(a); amd. Sec. 7, Ch. 421, L. 1979.

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-109. Farm tractor. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; R.C.M. 1947, 31-119(c); amd. Sec. 8, Ch. 421, L. 1979.

Cross-References

Special mobile equipment, 61-1-104.

61-1-110. Road tractor. "Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

History: En. Sec. 3, Ch. 263, L. 1955; R.C.M. 1947, 32-2103(c).

61-1-111. Trailer. "Trailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, except that as used in chapters 3 and 4 the term includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

History: Ap.p. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; Sec. 32-2105, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 32-2105(a), 53-133(d); amd. Sec. 9, Ch. 421, L. 1979.

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-112. Semitrailer. "Semitrailer" means every vehicle, with or without motive power (other than a pole trailer), designed for carrying property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle, except that as used in chapters 3 and 4 the term includes a pole trailer.

History: Ap.p. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; Sec. 32-1205, R.C.M. 1947; Ap.p. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 32-2105(b), 53-133(e); amd. Sec. 10, Ch. 421, L. 1979.

Cross-References

Size — weight — load, Title 61, ch. 10.

61-1-113. Dolly or converter gear. "Dolly or converter gear" means a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(7).

61-1-114. Pole trailer. "Pole trailer" means every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable generally of sustaining themselves as beams between the supporting connections.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; R.C.M. 1947, 32-2105(c).

Cross-References

Special fees — pole trailers, 61-10-204.

61-1-115. Bus. "Bus" means every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; R.C.M. 1947, 31-119(e).

Cross-References

Special fees — buses, 61-10-207.

Carriers of passengers, Title 69, ch. 11, part 2.

61-1-116. School bus. "School bus" has the meaning given in 20-10-101.

History: En. Sec. 3, Ch. 267, L. 1947; amd. Sec. 1, Ch. 291, L. 1973; Sec. 31-119, R.C.M. 1947; R.C.M. 1947, 31-119(d); amd. Sec. 2, Ch. 525, L. 1983.

61-1-117. Used motor vehicle. The term "used motor vehicle" as used in chapters 3 and 4 shall include any motor vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer, importer, dealer or wholesaler, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "second hand" within the ordinary meaning thereof.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(j); amd. Sec. 12, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment — Code Commissioner Instruction: The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Cross-References

Used motor vehicles — transfer to and from dealers, 61-4-111.

61-1-118. Police vehicle. "Police vehicle" means any vehicle used in the service of any law enforcement agency.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(e).

Cross-References

Operation of Sheriff's vehicle, 7-32-2125.

Audible and visual signals on vehicles, 61-9-402.

61-1-119. Authorized emergency vehicles. "Authorized emergency vehicles" means vehicles of the fire department, fire patrol, and such ambulances and emergency vehicles as are designated or authorized by the department.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(f); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Fire protection, Title 7, ch. 33.

Ambulance services, Title 7, ch. 34, part 1.

61-1-120. Emergency service vehicles. "Emergency service vehicles" means emergency service vehicles of state, county, or municipal departments, or public service vehicles, which by the nature of their operation cause a vehicular traffic hazard; or authorized tow cars.

History: En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(g).

Cross-References

Commercial tow car requirements, 61-9-416.

61-1-121. Implement of husbandry. "Implement of husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(b).

Cross-References

Farm tractor, 61-1-109.

Haystack movers, 61-10-123.

Special fees — certain farm vehicles, 61-10-206.

61-1-122. Trackless trolley coach. "Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

History: En. Sec. 4, Ch. 263, L. 1955; R.C.M. 1947, 32-2104(c).

61-1-123. Bicycle. "Bicycle" means:

(1) every vehicle propelled solely by human power upon which any person may ride, having two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters and similar devices; or

(2) every vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches (50 centimeters) regardless of the number of chambers in the power source. The power source must not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour (48.28 kilometers an hour) on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged.

History: **En. Sec. 2, Ch. 263, L. 1955; amd. Sec. 1, Ch. 153, L. 1975; R.C.M. 1947, 32-2102(i); amd. Sec. 6, Ch. 508, L. 1979; amd. Sec. 2, Ch. 450, L. 1983.**

Cross-References

Taxation — exempt categories, 15-6-201.

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

"Motor vehicle" defined, 61-1-102.

"Vehicle" defined, 61-1-103.

"Motorcycle" defined, 61-1-105.

"Motor-driven cycle" defined, 61-1-106.

Operators and chauffeurs to be licensed, 61-5-102.

Bicycle traffic, Title 61, ch. 8, part 6.

61-1-124. Railroad train. "Railroad train" means a steam engine or electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

History: **En. Sec. 7, Ch. 263, L. 1955; R.C.M. 1947, 32-2107(b).**

Cross-References

Rail transportation, Title 60, ch. 11

Railroads, Title 69, ch. 14.

61-1-125. Pneumatic tire. "Pneumatic tire" means every tire in which compressed air is designed to support the load.

History: **En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(a).**

Cross-References

Restrictions as to tire equipment, 61-9-406.

61-1-126. Solid tire. "Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

History: **En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(b).**

61-1-127. Metal tire. "Metal tire" means every tire the surface of which in contact with the highway is wholly or partly metal or other hard non-resilient material.

History: **En. Sec. 6, Ch. 263, L. 1955; R.C.M. 1947, 32-2106(c).**

61-1-128. Axle. "Axle" means a transverse beam which is the common axis of rotation of one or more wheels and which, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation.

History: En. 32-1123.2 by Sec. 13, Ch. 316, L. 1974; amd. Sec. 1, Ch. 269, L. 1977; R.C.M. 1947, 32-1123.2(8).

Cross-References

Measuring distance between axles, 61-10-106.

61-1-129. Camper. The term "camper" as used in 61-1-102, 61-3-524, and 61-3-525 includes but is not limited to truck camper, chassis-mounted camper, cab over, half cab over, non cab over, telescopic, and telescopic cab over, but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached.

History: En. Sec. 1, Ch. 414, L. 1973; amd. Sec. 1, Ch. 112, L. 1977; R.C.M. 1947, 53-644; amd. Sec. 2, Ch. 715, L. 1991.

Compiler's Comments

1991 Amendment: Inserted reference to 61-1-102.

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

61-1-130. Motor home. "Motor home" as used in 61-3-521 and 61-3-522 means a motor vehicle:

(1) designed to provide temporary living quarters, built as an integral part of or permanently attached to a self-propelled motor vehicle chassis or van;

(2) containing permanently installed independent life support systems that meet the ANSI/A119.2 standard; and

(3) providing at least four of the following types of facilities:

(a) cooking, refrigeration, or icebox;

(b) self-contained toilet;

(c) heating or air-conditioning, or both;

(d) potable water supply, including a faucet and sink; or

(e) separate 110-volt or 125-volt electrical power supply or a liquified petroleum gas supply, or both.

History: En. Sec. 5, Ch. 712, L. 1979; amd. Sec. 1, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: After "means" substituted present definition of motor home requiring temporary living quarters, life support systems, or four types of facilities for former definition that read: "a self-propelled motor vehicle originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use".

61-1-131. Travel trailer. "Travel trailer" as used in 61-3-521 and 61-3-523 means a trailer 45 feet or less in length and 8 feet or less in width originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use and not used as a principal residence.

History: En. Sec. 6, Ch. 712, L. 1979; amd. Sec. 1, Ch. 488, L. 1983.

61-1-132. Recreational vehicle. The term "recreational vehicle" as used in 61-4-101 through 61-4-105 and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use.

History: En. Sec. 1, Ch. 443, L. 1981; amd. Sec. 1, Ch. 57, L. 1989.

Compiler's Comments

1991 Amendment — Code Commissioner Correction: Inserted reference to 61-4-501; however, the Code Commissioner deleted the erroneous reference.

Cross-References

Retail installment sales — "recreational vehicle" defined, 31-1-202.

61-1-133. Quadricycle. "Quadricycle" means a four-wheeled motor vehicle, designed for on-road or off-road use, having a seat or saddle upon which the operator sits and a motor of less than 300 cubic centimeters capable of producing not more than 35 horsepower. The term does not include golf carts.

History: En. Sec. 1, Ch. 516, L. 1985.

61-1-134. Commercial motor vehicle defined — exceptions. (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has a gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used to transport hazardous material.

(2) Commercial motor vehicles under this section do not include vehicles operated within the state of Montana that are:

(a) registered as paying the 16% gross weight fee under 61-10-206;

(b) used for firefighting and that are bearing Montana tax-exempt plates; or

(c) police emergency response and safety education units.

(3) Vehicles that are operated within the state of Montana by farmers or persons employed by farmers who are transporting farm products or farm supplies and that are operated within 150 miles of the farm headquarters are not considered commercial motor vehicles under this section.

History: En. Sec. 1, Ch. 443, L. 1987; amd. Sec. 11, Ch. 378, L. 1989; amd. Sec. 1, Ch. 521, L. 1989; amd. Sec. 1, Ch. 127, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2)(c) exempting police emergency response and safety education units from definition of commercial motor vehicle.

61-1-135. Commercial vehicle operator's endorsement. "Commercial vehicle operator's endorsement" means an endorsement to a Montana driver's license that authorizes the licensee to operate a class of commercial motor vehicle.

History: En. Sec. 2, Ch. 443, L. 1987; amd. Sec. 1, Ch. 563, L. 1991.

Compiler's Comments

1991 Amendment: At end deleted sentence that read: "However, if the applicant's vehicle does not otherwise require a commercial vehicle operator's endorsement, a hazardous material endorsement may be substituted for the commercial vehicle operator's endorsement".

Cross-References

Classification of commercial vehicle operator's endorsements, 61-5-112.

61-1-136. Driver's license. "Driver's license" means any license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(1) any temporary license or instruction permit;

(2) the privilege of any person to drive a motor vehicle, whether or not such person holds a valid license;

(3) any nonresident's driving privilege;

(4) a motorcycle endorsement; and

(5) a commercial vehicle operator's endorsement.

History: En. Sec. 3, Ch. 443, L. 1987.

Cross-References

Driver licensing and sanctions, Title 61, ch. 5.

61-1-137. Hazardous material. "Hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported.

History: En. Sec. 4, Ch. 443, L. 1987.

61-1-138. Van. "Van" means a motor vehicle designed for the transportation of at least six persons and not more than nine persons and intended for but not limited to family or personal transportation without compensation.

History: En. Sec. 2, Ch. 791, L. 1991.

Part 2

Roads

Part Cross-References

County roads, Title 7, ch. 14, parts 21 through 26.

Highways and Transportation, Title 60.

61-1-201. Highway. "Highway" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel, except that for the purpose of chapter 8 the term also includes ways which have been or shall be dedicated to public use.

History: En. Sec. 6, Ch. 267, L. 1947; R.C.M. 1947, 31-122(part); amd. Sec. 11, Ch. 421, L. 1979.

Cross-References

Highways, Title 60.

61-1-202. Public highway. "Public highway" means "highway" as defined in 61-1-201.

History: En. Sec. 7, Ch. 242, L. 1971; Sec. 32-1638, R.C.M. 1947; amd. and redes. 32-1631.1 by Sec. 48, Ch. 316, L. 1974; R.C.M. 1947, 32-1631.1; amd. Sec. 12, Ch. 421, L. 1979.

Cross-References
Highways, Title 60.

61-1-203. Street. "Street" means the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.

History: En. Sec. 6, Ch. 267, L. 1947; R.C.M. 1947, 31-122(part); amd. Sec. 13, Ch. 421, L. 1979.

Cross-References
Improvement districts, Title 7, ch. 12.
Municipal trafficways, Title 7, ch. 14, part 41.
Establishment and change of street grade, Title 7, ch. 14, part 42.

61-1-204. Arterial street. "Arterial street" means any U. S. or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by local authorities within their respective jurisdictions as part of a major arterial system or highway.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(a).

Cross-References
Acquisition of property for controlled-access facility, 7-14-101.
Control of access, Title 60, ch. 5, part 1.
"Arterial highway" defined, 60-5-102.
Restricted and controlled access, 61-8-331.

61-1-205. Private road or driveway. "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(b).

Cross-References
Vehicle entering highway from private road, 61-8-343.

61-1-206. Roadway. Except as used in 61-8-605, "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" refers to any roadway separately but not to all roadways collectively.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(c); amd. Sec. 1, Ch. 169, L. 1991.

Compiler's Comments
1991 Amendment: At beginning inserted exception clause; and made minor changes in style.

61-1-207. Laned roadway. "Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(e).

Cross-References
Driving on roadways laned for traffic, 61-8-328.

61-1-208. Sidewalk. "Sidewalk" means that portion of a street between the curb lines or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(d).

Cross-References
Construction and maintenance of sidewalks, curbs, and gutters, 7-14-4122.
Regulation of sidewalks, 7-14-4123.
Pedestrian's right-of-way on sidewalks, 61-8-509.
Bicycles on sidewalks, 61-8-608.

61-1-209. Crosswalk. "Crosswalk" means:

(1) that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway;

(2) any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrians crossing by lines or other markings on the surface.

History: En. Sec. 16, Ch. 263, L. 1955; R.C.M. 1947, 32-2116.

Cross-References
Pedestrian malls, Title 7, ch. 14, part 47.
School safety patrols, 20-1-408.
Pedestrian traffic, Title 61, ch. 8, part 5.

61-1-210. Through highway. "Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in chapter 8 of this title.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(f).

Cross-References
"Throughway" defined, 60-5-102.

61-1-211. Controlled-access highway. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

History: En. Sec. 14, Ch. 263, L. 1955; amd. Sec. 2, Ch. 247, L. 1959; R.C.M. 1947, 32-2114(g).

Cross-References
"Controlled-access highway" defined, 60-5-102.
Restricted and controlled access, 61-8-331.
Restrictions on use of controlled-access roadway, 61-8-332.

61-1-212. Intersection. (1) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or if none then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

History: En. Sec. 15, Ch. 263, L. 1955; R.C.M. 1947, 32-2115.

Cross-References

"Throughway intersection area" defined, 60-5-102.

Traffic regulation at intersections, 61-8-333, 61-8-339 through 61-8-341.

Part 3

Persons — Agencies

61-1-301. Department. "Department" means the department of justice acting directly or through its duly authorized officers or agents.

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969; R.C.M. 1947, 31-123(b); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Department of Justice — records, 61-3-101.

61-1-302. Chief. "Chief" means the chief of the Montana highway patrol.

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969; R.C.M. 1947, 31-123(a).

Cross-References

Highway Patrol Chief, Title 44, ch. 1, part 2.

61-1-303. Commission. "Commission" means the state highway commission.

History: En. Sec. 10, Ch. 263, L. 1955; R.C.M. 1947, 32-2110(c).

Cross-References

Highway Commission — membership and districts, 2-15-2502.

Highway Commission, Title 60, ch. 2, part 1.

61-1-304. Police officer. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: En. Sec. 12, Ch. 263, L. 1955; R.C.M. 1947, 32-2112(part).

Cross-References

Municipal police force, Title 7, ch. 32, part 41.

61-1-305. Highway patrol officer. "Highway patrol officer" means every state officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

History: En. Sec. 12, Ch. 263, L. 1955; R.C.M. 1947, 32-2112(part); amd. Sec. 14, Ch. 421, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Highway Patrol, Title 44, ch. 1.

61-1-306. Local authorities. "Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this state.

History: En. Sec. 13, Ch. 263, L. 1955; R.C.M. 1947, 32-2113.

Cross-References

Local government officers, Title 7, ch. 4.

General provisions related to county roads, Title 7, ch. 14, part 21.

Municipal trafficways, Title 7, ch. 14, part 41.

61-1-307. Person. "Person" means an individual, corporation, partnership, association, firm, or other legal entity. "Person" as used in part 1, chapter 6, means every natural person, firm, partnership, association, or corporation.

History: Ap.p. Sec. 1, Ch. 381, L. 1977; Sec. 51-609, R.C.M. 1947; Ap.p. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; Sec. 53-418, R.C.M. 1947; R.C.M. 1947, 51-609(4), 53-418(11); amd. Sec. 15, Ch. 421, L. 1979.

Cross-References

Corporations, Title 35, ch. 1 through 4.

Partnerships, Title 35, ch. 10 through 13.

Associations, Title 35, ch. 15 and 16.

61-1-308. Pedestrian. "Pedestrian" means any person afoot.

History: En. Sec. 11, Ch. 263, L. 1955; R.C.M. 1947, 32-2111(b).

Cross-References

Pedestrian traffic, Title 61, ch. 8, part 5.

61-1-309. Driver. "Driver" means every person who drives or is in actual physical control of a vehicle.

History: En. Sec. 11, Ch. 263, L. 1955; R.C.M. 1947, 32-2111(c).

Cross-References

Licensing of drivers, Title 61, ch. 5.

61-1-310. Owner. "Owner" means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract, or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner is the person in whom is vested right of possession or control.

History: En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974; R.C.M. 1947, 53-702(3); amd. Sec. 16, Ch. 421, L. 1979.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

61-1-311. Operator. "Operator" means a person who is in actual physical control of a motor vehicle.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(9); amd. Sec. 17, Ch. 421, L. 1979.

Cross-References

Operators to be licensed, 61-5-102.

61-1-312. Repealed. Sec. 39, Ch. 443, L. 1987.

History: En. Sec. 4, Ch. 267, L. 1947; Sec. 31-120, R.C.M. 1947; R.C.M. 1947, 31-120(c).

61-1-313. Nonresident. "Nonresident" means every person who is not a resident of this state.

History: En. Sec. 5, Ch. 267, L. 1947; R.C.M. 1947, 31-121.

Cross-References

Residence — rules for determining, 1-1-215.

61-1-314. Dealer. (1) "Dealer" means:

(a) a person, firm, association, or corporation which, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105; or

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees; or

(c) public officers while performing or in the operation of their duties.

(3) A dealer dealing in used motor vehicles only shall purchase a Montana store license.

History: (1)En. Sec. 2, Ch. 144, L. 1937; Sec. 51-202, R.C.M. 1947; (2)En. 51-609 by Sec. 1, Ch. 381, L. 1977; Sec. 51-609, R.C.M. 1947; (3)En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; Sec. 53-133, R.C.M. 1947; R.C.M. 1947, 51-609(2), 53-133(part); amd. Sec. 18, Ch. 421, L. 1979; amd. Sec. 1, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(b) expanding definition of dealer to include property owner allowing sale of more than three vehicles per year on property; in (2)(b), after "persons", inserted "included in subsection (2)(a)"; and made minor changes in style.

Cross-References

Motor vehicle dealers, Title 61, ch. 4, part 1.

61-1-315. Trailer dealer. "Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(h); amd. Sec. 19, Ch. 421, L. 1979.

Cross-References

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

61-1-316. Manufacturer. The term "manufacturer" includes any person, firm, corporation, or association engaged in the manufacture of motor vehicles, trailers, or semitrailers as a regular business.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R.C.M. 1921; re-en. Sec. 1763, R.C.M. 1935; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965; R.C.M. 1947, 53-133(part); amd. Sec. 20, Ch. 421, L. 1979.

Cross-References

Licensing of new motor vehicle manufacturers, Title 61, ch. 4, part 2.

61-1-317. Railroad. "Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

History: En. Sec. 7, Ch. 263, L. 1955; R.C.M. 1947, 32-2107(a).

Cross-References

Rail transportation, Title 60, ch. 11.

Railroads, Title 69, ch. 14.

61-1-318. Broker. "Broker" means a person, other than a dealer as defined in 61-1-314, engaged in the business of offering to procure or procuring motor vehicles or who holds himself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles by negotiating purchases, contracts, sales, or exchanges, and who does not store, display, or take ownership of any vehicles for the purpose of selling vehicles.

History: En. Sec. 1, Ch. 393, L. 1989.

Cross-References

Sales and distribution of motor vehicles, Title 61, ch. 4.

Application for dealer's license, 61-4-101.

61-1-319. Wholesaler. "Wholesaler" means a person, firm, partnership, association, or corporation who for a commission or with intent to make a profit or gain of money or other thing of value sells, exchanges, or attempts to negotiate a sale or exchange of an interest in a used motor vehicle, recreational vehicle, trailer, semitrailer, special mobile equipment, motorcycle, or quadricycle only to motor vehicle dealers and auto auctions licensed under this part.

History: En. Sec. 9, Ch. 383, L. 1991.

Part 4

Traffic Control

Part Cross-References

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

61-1-401. Traffic. "Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highways for purposes of travel.

History: En. Sec. 20, Ch. 263, L. 1955; R.C.M. 1947, 32-2120.

61-1-402. Traffic-control signal. "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(b).

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

61-1-403. Official traffic-control devices. "Official traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this title, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. For the purpose of chapter 8, part 2, of this title, the term also includes "flag person" as defined in 61-1-411.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(a); amd. Sec. 21, Ch. 421, L. 1979.

Cross-References

Traffic-control devices, Title 61, ch. 8, part 2.

61-1-404. Railroad sign or signal. "Railroad sign" or "railroad signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(c).

Cross-References

Highway crossing railroad, 60-4-110.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-1-405. Safety zone. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

History: En. Sec. 17, Ch. 263, L. 1955; R.C.M. 1947, 32-2117.

Cross-References

Crosswalk, 61-1-209.

61-1-406. Right-of-way. "Right-of-way" means the privilege of the immediate use of the roadway.

History: En. Sec. 21, Ch. 263, L. 1955; R.C.M. 1947, 32-2121.

Cross-References

Vehicle approaching or entering intersection, 61-8-339.

61-1-407. Stop, stopping, standing, and parking. (1) "Stop", when required, means complete cessation from movement.

(2) "Stop", "stopping", or "standing", when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer, highway patrol officer, or traffic-control sign or signal.

(3) "Parking", when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

History: En. Sec. 21.1, Ch. 263, L. 1955; R.C.M. 1947, 32-2122; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Municipal parking, Title 7, ch. 14, part 45.

Parking commissions, Title 7, ch. 14, part 46.

Offstreet parking facilities, Title 7, ch. 14, part 47.

Stopping, standing, and parking regulations, 61-8-353 through 61-8-356.

61-1-408. Business district. "Business district" means the territory contiguous to and including a highway when within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least 300 feet of frontage on one side or 300 feet collectively on both sides of the highway.

History: En. Sec. 18, Ch. 263, L. 1955; R.C.M. 1947, 32-2118(a).

Cross-References

Highway encroachments, Title 60, ch. 6.

Turning movements and required signals, 61-8-336.

61-1-409. Residence district. "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business.

History: En. Sec. 18, Ch. 263, L. 1955; R.C.M. 1947, 32-2118(b).

61-1-410. Urban district. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than 100 feet for a distance of one-fourth mile or more.

History: En. Sec. 21.2, Ch. 263, L. 1955; R.C.M. 1947, 32-2123(c).

Cross-References

Turning movements and required signals, 61-8-336.

61-1-411. Flag person. "Flag person" means any person who directs, controls, or alters the normal flow of vehicular traffic upon a street or highway as a result of a vehicular traffic hazard then present on that street or highway. This person, except a uniformed traffic enforcement officer exercising his duty as a result of a planned vehicular traffic hazard, shall be equipped as required by the rules of the Montana department of transportation.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(d); amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Flagmen escorts, 60-7-204.

61-1-412. Flag vehicle. "Flag vehicle" means any vehicle equipped as required by law or Montana department of transportation regulations to warn or guide vehicular traffic. When not being operated as a flag vehicle, signs shall be removed.

History: En. Sec. 19, Ch. 263, L. 1955; amd. Sec. 1, Ch. 148, L. 1975; R.C.M. 1947, 32-2119(e); amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Flagmen escorts, 60-7-204.

61-1-413. Funeral escort vehicle. "Funeral escort vehicle" means a motor vehicle properly equipped pursuant to 61-8-381.

History: En. Sec. 2, Ch. 338, L. 1991.

61-1-414. Funeral lead vehicle. "Funeral lead vehicle" means a motor vehicle, including a funeral hearse, properly equipped pursuant to 61-8-381 leading and facilitating the movement of a funeral procession.

History: En. Sec. 3, Ch. 338, L. 1991.

61-1-415. Funeral procession. "Funeral procession" means two or more motor vehicles, one of which is carrying the remains of a deceased person, in the daylight hours, including a funeral lead vehicle and a funeral escort vehicle.

History: En. Sec. 4, Ch. 338, L. 1991.

Part 5

Miscellaneous

61-1-501. Housetrailer. "Housetrailer" means a trailer or a semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer, as defined above, but which is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

History: En. Sec. 5, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1957; R.C.M. 1947, 32-2105(d).

Cross-References

Retail installment sales — "manufactured structure" defined, 31-1-202.

"Occupied structure" defined, 45-2-101.

Riding in housetrailers, 61-8-367.

61-1-502. Gross weight. "Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

History: En. Sec. 9, Ch. 263, L. 1955; R.C.M. 1947, 32-2109.

Cross-References

Gross vehicle weight licensing requirements, Title 61, ch. 10, part 2.

61-1-503. Suspension. "Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of such suspension.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(a).

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-1-504. Revocation. "Revocation" means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and may not be renewed or restored. An application for a new license may be presented and acted upon by the department after the expiration of the period of the revocation.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(b); amd. Sec. 22, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-1-505. Cancellation. "Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

History: En. Sec. 8, Ch. 267, L. 1947; amd. Sec. 1, Ch. 110, L. 1961; R.C.M. 1947, 31-124(c).

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-1-506. Explosives. "Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

History: En. Sec. 8, Ch. 263, L. 1955; R.C.M. 1947, 32-2108(a).

Cross-References

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Vehicles transporting explosives, 61-9-413.

61-1-507. Flammable liquid. "Flammable liquid" means any liquid which has a flash point of 70 degrees F or less as determined by a Tagliabue or equivalent closed cup test device.

History: En. Sec. 8, Ch. 263, L. 1955; R.C.M. 1947, 32-2108(b).

Cross-References

Regulation of petroleum products, Title 82, ch. 15.

61-1-508. Registration. "Registration" means, as used in part 1, chapter 6, registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(13).

Cross-References

Registration, Title 61, ch. 3, part 3.

61-1-509. Certificate of ownership. "Certificate of ownership" means the certificate issued by the department to the transferee upon a transfer of ownership of a motor vehicle.

History: En. Sec. 23, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

CHAPTER 2

HIGHWAY SAFETY

Part 1 — Traffic Safety Program

61-2-101. Purpose.
61-2-102. Definitions.
61-2-103. Duties.
61-2-104. Funds.
61-2-105. Local programs.
61-2-106. County drinking and driving prevention program.
61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.
61-2-108. Funding allocation for programs to prevent or reduce drinking and driving.

Part 2 — Vehicle Equipment Safety

61-2-201. Vehicle Equipment Safety Compact.
61-2-202. Legislative findings on equipment safety.
61-2-203. Equipment requirements continued in force.
61-2-204. State commissioner on vehicle equipment safety commission.
61-2-205. Retirement of equipment safety commission employees.
61-2-206. Governmental agencies to cooperate with equipment safety commission.
61-2-207. Documents filed and notices given by equipment safety commission.
61-2-208. Equipment safety commission funds.
61-2-209. Governor as executive head for compact purposes.

Part 3 — Driver Improvement Program

61-2-301. Purpose.
61-2-302. Establishment of driver improvement program — participation by offending drivers.

Part 4 — Motorcycle Safety Training Program
(Renumbered and Repealed.
Sec. 8, 10, Ch. 701, L. 1991)

Chapter Cross-References

Highway code, Title 60, ch. 1.

Part 1

Traffic Safety Program

61-2-101. Purpose. To promote public safety, health, and welfare and to reduce traffic deaths, injuries, and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including but not limited to driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries, and deaths; improve and establish a system of vehicle registration, vehicle operation, and vehicle inspection; assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including but not limited to communications, medical or mechanical assistance, and ambulance service for injured persons; and establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967; amd. Sec. 74, Ch. 348, L. 1974; R.C.M. 1947, 32-4601.

Cross-References

Traffic regulation, Title 61, ch. 8.

61-2-102. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Highway traffic safety program" means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program shall be in accordance with uniform standards established by the secretary of commerce of the United States under Title 23, U.S.C., as amended. Nothing in this part restricts or prohibits the establishment of standards which enlarge or implement the federal standards.

(2) "Political subdivisions" means every county, incorporated city or town, and school district within the boundaries of the state.

(3) "Department" means the department of justice provided for in Title 2, chapter 15, part 20.

History: En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974; amd. Sec. 34, Ch. 213, L. 1975; R.C.M. 1947, 32-4602; amd. Sec. 8, Ch. 274, L. 1981.

61-2-103. Duties. (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor's responsibilities under this part. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of 20-9-603 or part 5, chapter 7, of Title 20.

(2) The department of justice shall:

(a) advise and assist the governor in all matters of highway safety and establish comprehensive training programs, including establishment and regulation of driver training schools and certification of the schools and instructors and establishment of adult training and retraining programs;

(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use;

(c) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention;

(d) establish a uniform system of driver licensing, including mental and physical standards; and

(e) prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974; amd. Sec. 35, Ch. 213, L. 1975; R.C.M. 1947, 32-4605; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 1, Ch. 126, L. 1991.

Compiler's Comments

1991 Amendment: Inserted third sentence of (1) allowing Governor to appoint an administrator of the highway traffic safety program.

Cross-References

Powers and duties of Governor, 2-15-201.

Superintendent of Public Instruction, 2-15-701.

Insurance discount for mature driver completing program, 33-16-222.

61-2-104. Funds. The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least 40% of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this part, the governor may accept all gifts, money, and funds to implement the purposes of this part. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last 2 full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974; R.C.M. 1947, 32-4606.

Cross-References

Federal revenues and endowments, Title 17, ch.3.

Highways — distribution and apportionment of highway funds, Title 60, ch. 3.

61-2-105. Local programs. Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds may be spent unless his approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules.

History: En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974; R.C.M. 1947, 32-4607.

Cross-References

Limits on disbursements and expenditures, Title 17, ch. 8, part 1.

61-2-106. County drinking and driving prevention program. (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department.

History: En. Sec. 1, Ch. 643, L. 1987; amd. Sec. 2, Ch. 751, L. 1991.

Compiler's Comments

1991 Amendment: In (4)(b)(iv), after "county governing body", deleted "or the department"; and in (5) substituted "may" for "must".

61-2-107. License reinstatement fee to fund county drinking and driving prevention programs. (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in an account in the state special revenue fund to be distributed to county treasurers. The department shall distribute to each county treasurer money in the account collected as license reinstatement fees in that county. The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical-free youth facilities and programs. Up to one-half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction.

History: En. Sec. 2, Ch. 643, L. 1987; amd. Sec. 1, Ch. 55, L. 1989; amd. Sec. 1, Ch. 751, L. 1991.

Compiler's Comments

1991 Amendment: In (1) increased fee from $50 to $100; in (2)(a), after "deposit", inserted "one-half of" and inserted last phrase requiring use of fees for county drinking and driving prevention programs; and inserted (2)(b) specifying use of remainder of fees.

61-2-108. Funding allocation for programs to prevent or reduce drinking and driving. If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2)(a), at the end of each quarter.

History: En. Sec. 3, Ch. 643, L. 1987; amd. Sec. 3, Ch. 751, L. 1991.

Compiler's Comments

1991 Amendment: Inserted reference to county portion of proceeds and reference to 61-2-107(2)(a).

Part 2

Vehicle Equipment Safety

Part Cross-References

Vehicle equipment, Title 61, ch. 9.

61-2-201. Vehicle Equipment Safety Compact. This part shall be known and may be cited as the "Vehicle Equipment Safety Compact".

Article I. Findings and Purposes

(1) The party states find that:

(a) accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare;

(b) there is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations, and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(2) The purposes of this compact are to: (a) promote uniformity in regulation of and standards for equipment;

(b) secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety;

(c) provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subsection (1) of this article.

(3) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

Article II. Definitions

As used in this compact:

(1) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(2) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(3) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

Article III. The Commission

(1) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission", hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(2) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission may appoint an

executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(5) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(6) The commission may establish and maintain independently or in conjunction with any one or more of the party states a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(7) The commission may borrow, accept, or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(8) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize, and dispose of the same.

(9) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(10) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(11) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

Article IV. Research and Testing

The commission shall have power to:

(1) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in equipment and related fields;

(2) recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken;

(3) contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing;

(4) recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations, or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

Article V. Vehicular Equipment

(1) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than 60 days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(2) Following the hearing or hearings provided for in subsection (1) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations, or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(3) Each party state obligates itself to give due consideration to any and all rules, regulations, and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(4) The commission shall send prompt notice of its action in issuing any rule, regulation, or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation, or code.

(5) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation, or code. In such event, the commissioner of such party state shall submit any commission rule, regulation, or code to the legislature as promptly

as may be in lieu of administrative acceptance or rejection thereof by the party state.

(6) Except as otherwise specifically provided in or pursuant to subsections (5) and (7) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation, or code within 6 months of the sending of the notice and, upon such adoption, the rule, regulation, or code shall have the force and effect of law therein.

(7) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation, or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation, or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subsection.

Article VI. Finance

(1) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(2) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(3) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III(8) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III(8) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the

audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Conflict of Interest

(1) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale, or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations, or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment, or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(2) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission, or to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

Article VIII. Advisory and Technical Committees

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

Article IX. Entry Into Force and Withdrawal

(1) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article X. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965; R.C.M. 1947, 32-21-166.

61-2-202. Legislative findings on equipment safety. The legislature finds that:

(1) the public safety necessitates the continuous development, modernization, and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion;

(2) the public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation;

(3) the department, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable, and orderly means of promoting the public safety in the manner and within the scope contemplated by this part.

History: En. Sec. 2, Ch. 109, L. 1965; R.C.M. 1947, 32-21-167; amd. Sec. 1, Ch. 503, L. 1985.

61-2-203. Equipment requirements continued in force. Provisions of chapter 9 of this title shall continue to be in effect. The approval of the legislature is a condition precedent to the taking effect of any rule, regulation, or code that may be adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965; R.C.M. 1947, 32-21-168; amd. Sec. 24, Ch. 421, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-2-204. State commissioner on vehicle equipment safety commission. Notwithstanding section 1, Chapter 272, Laws of 1971, the commissioner of this state on the vehicle equipment safety commission is the highway patrol chief who shall serve during his continuance as such officer. The commissioner appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of the alternate are as determined by the commissioner designating him.

History: En. Sec. 4, Ch. 109, L. 1965; R.C.M. 1947, 32-21-169; amd. Sec. 25, Ch. 421, L. 1979.

Cross-References

Highway Patrol Chief, Title 44, ch. 1, part 2.

61-2-205. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III(6) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965; R.C.M. 1947, 32-21-170.

Cross-References

Administration of PERS, Title 19, ch. 3, part 3.

61-2-206. Governmental agencies to cooperate with equipment safety commission. Within appropriations available therefor, the departments, agencies, and officers of the government of this state may cooperate with and assist the vehicle equipment safety commission within the scope contemplated by Article III(8) of the compact. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965; R.C.M. 1947, 32-21-171.

61-2-207. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III(10) of the compact shall be with the department. Any and all notices required by commission bylaws to be given pursuant to Article III(10) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965; R.C.M. 1947, 32-21-172; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Department of Justice — records, 61-3-101.

61-2-208. Equipment safety commission funds. (1) Pursuant to Article VI(1) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

(2) Pursuant to Article VI(5) of the compact, the department of commerce is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Secs. 5, 9, Ch. 109, L. 1965; R.C.M. 1947, 32-21-173, 32-21-174; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

Cross-References

Budget systems and program plans, Title 17, ch. 7, part 1.

61-2-209. Governor as executive head for compact purposes. The term "executive head" as used in Article IX(2) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965; R.C.M. 1947, 32-21-175.

Cross-References

Governor, Title 2, ch. 15, part 2.

Part 3

Driver Improvement Program

61-2-301. Purpose. The toll of accidents, personal injuries, and deaths resulting from the operation of motor vehicles remains a matter of great concern to the legislature. The failure to apply proper driving techniques in the operation of vehicles and improper driving attitudes and habits on the part of operators constitute major factors in a substantial portion of both fatal and nonfatal automobile accidents. Current efforts to improve driver skills, responsibilities, attitudes, and habits have not proved adequate to stem the accident, injury, and death toll. The public interest in the cause of highway safety will be well served by additional methods of driver rehabilitation and improvement and the establishment of programs of rehabilitative instruction, driver improvement, and direction for drivers with poor driving records.

History: En. 31-191 by Sec. 1, Ch. 526, L. 1977; R.C.M. 1947, 31-191.

61-2-302. Establishment of driver improvement program — participation by offending drivers. (1) The department of justice may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other such subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in such driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation; or

(ii) completed 1 year of a 3-year revocation; and

(iii) have met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein may be stayed if that person complies with the requirements established for the driver

improvement program and meets the eligibility requirements of subsection (2).

(4) In the event a person's driver's license has been surrendered prior to his selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of his agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this part creates a right to be included in any program established under this part.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state, or a hearing examiner of the department of justice.

(9) The department of justice may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth thereon.

(10) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed on a restricted license issued to him under this section.

History: En. 31-192 by Sec. 2, Ch. 526, L. 1977; R.C.M. 1947, 31-192; amd. Sec. 1, Ch. 297, L. 1979; amd. Sec. 1, Ch. 444, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

When no penalty is specified, 46-18-212.

Drivers' licenses — revocation, suspension, and cancellation, Title 61, ch. 5, part 2.

Records to be kept by Department of Justice, 61-11-102.

Habitual traffic offenders, Title 61, ch. 11, part 2.

Part 4

Motorcycle Safety Training Program (Renumbered and Repealed. Sec. 8, 10, Ch. 701, L. 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

61-2-401. Renumbered 20-7-510.
61-2-402. Renumbered 20-7-511.
61-2-403. Renumbered 20-7-512.
61-2-404. Renumbered 20-7-513.
61-2-405. Renumbered 20-7-514.
61-2-406. Repealed. Sec. 8, Ch. 701, L. 1991.

Histories of Repealed Sections:

61-2-406. En. Sec. 6, Ch. 324, L. 1989.

CHAPTER 3

CERTIFICATES OF OWNERSHIP, REGISTRATION, AND TAXATION OF MOTOR VEHICLES

Part 1 — General Provisions

61-3-101. Duties of department — records.
61-3-102. Repealed.
61-3-103. Filing of security interests, perfection, rights, procedure, fees.
61-3-104. Repealed.
61-3-105. Registrant as prima facie owner of vehicle.
61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity.
61-3-107. Identification number for trailers, campers, and other vehicles.
61-3-108. Disposition of fees.

Part 2 — Certificates of Ownership

61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership or registration.
61-3-202. Certificate of ownership — issuance — contents — joint ownership — inspection — fees.
61-3-203. Fee for original certificate of ownership and transfer of registration — disposition.
61-3-204. Lost certificates.
61-3-205. Transfer of ownership of vehicles by insurance company.
61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record.
61-3-207. Mobile home or housetrailer — transfer of interest.
61-3-208. Affidavit and bond for certificate.
61-3-209 reserved.
61-3-210. Definitions.
61-3-211. Surrender of certificate of ownership — issuance of salvage certificate — salvage retitling requirements.
61-3-212. Retitling salvage vehicles — penalty.

Part 3 — Registration

61-3-301. Registration — license plate required — display.
61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden.
61-3-303. Application for registration.
61-3-304. Repealed.
61-3-305. Blanks to be provided.
61-3-306 through 61-3-310 reserved.
61-3-311. Time for making application.
61-3-312. Renewal of registration.
61-3-313. Vehicles subject to staggered registration.
61-3-314. Registration period.
61-3-315. Reregistration on anniversary date — department to make rules.
61-3-316. New registrations under staggered registration.
61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase.
61-3-318. Fleet registration period.
61-3-319 and 61-3-320 reserved.
61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.
61-3-322. Certificates of registration — issuance.
61-3-323. Definitions.
61-3-324. Fleet registration — application — additions to and deletions from fleet.

61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition.
61-3-326 through 61-3-330 reserved.
61-3-331. Assignment of number plates.
61-3-332. Number plates.
61-3-333. Replacing number plates.
61-3-334. Expiration of registration on transfer of ownership of vehicle — duty to remove plates.
61-3-335. Transfer of license plates to another motor vehicle.
61-3-336. Recycling license plates.
61-3-337 through 61-3-340 reserved.
61-3-341. Lost certificates.
61-3-342. Temporary window sticker.
61-3-343 and 61-3-344 reserved.
61-3-345. County motor vehicle computer system.
61-3-346. County motor vehicle computer committee.
61-3-347. Duties of county motor vehicle computer committee.

Part 4 — Special Registration

61-3-401. Definition of personalized license plates.
61-3-402. Personalized license plates authorized.
61-3-403. Color and design of personalized license plates — exception — county designation.
61-3-404. Personalized license plates restricted to registered owner.
61-3-405. Application for personalized plates.
61-3-406. Fees for personalized plates — disposition.
61-3-407 through 61-3-410 reserved.
61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item.
61-3-412. Display of original Montana license plates on collector's item vehicle — definition — validation.
61-3-413 through 61-3-420 reserved.
61-3-421. Amateur radio operators — special license plate.
61-3-422. Issuance — application — additional fee.
61-3-423. Rules — limit of one identical pair of plates for each operator.
61-3-424. List of radio operators' special plates — distribution to public officials.
61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license.
61-3-426 through 61-3-430 reserved.
61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment.
61-3-432. Exemptions of vehicles not capable of operation on highways.
61-3-433. Issuance of identification plate and receipt — contents.
61-3-434. Attaching receipt to equipment — inspection.
61-3-435 through 61-3-440 reserved.
61-3-441. Renumbered 61-3-524 by Code Commissioner, 1979.
61-3-442. Renumbered 61-3-525 by Code Commissioner, 1979.
61-3-443. Repealed.
61-3-444. Repealed.
61-3-445. Repealed.
61-3-446. Retention of special license plates.
61-3-447. Repealed.
61-3-448 through 61-3-450 reserved.
61-3-451. Repealed.
61-3-452. Disabled veterans' plates nontransferable.
61-3-453. Disabled veterans' plates limited to one automobile or truck — personalized plates.
61-3-454. Special parking privilege.
61-3-455. Violation a misdemeanor.
61-3-456 through 61-3-460 reserved.
61-3-461. Short title.
61-3-462. Definitions.
61-3-463. Collegiate license plates.
61-3-464. Application for collegiate license plates.
61-3-465. Issuance — application — additional fee — disposition.

61-3-466. Personalized collegiate license plates.
61-3-467. Authorization to receive and transmit donations.

Part 5 — Taxes and Fees

61-3-501. When vehicle taxes and fees are due.
61-3-502. Sales tax on new motor vehicles — exemptions.
61-3-503. Assessment.
61-3-504. Computation of tax.
61-3-505. Repealed.
61-3-506. Rules.
61-3-507. Exemption.
61-3-508. Junk vehicle disposal fee.
61-3-509. Disposition of taxes.
61-3-510. Weed control fee.
61-3-511. County motor vehicle computer fee.
61-3-512. State parks recreational vehicle fee — collection and expenditure — exception.
61-3-513 through 61-3-517 reserved.
61-3-518. Application for camper certificate of ownership.
61-3-519. Grace period for registration and payment of tax or fee — penalty for failure to pay tax or fee.
61-3-520. Taxation of vehicles used exclusively in filming motion pictures or television commercials.
61-3-521. Fee in lieu of tax for certain vehicles.
61-3-522. Schedule of fees for motor homes.
61-3-523. Schedule of fees for travel trailers and campers.
61-3-524. Tax-paid decal required on camper — application for decal — application fee — issuance — disposition of fee.
61-3-525. Annual application for decals.
61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed.
61-3-527 through 61-3-530 reserved.
61-3-531 through 61-3-534. Repealed.
61-3-535. Vehicle reregistration by mail — renewal cards and reregistration notice by mail.
61-3-536. Repealed.
61-3-537. Local option vehicle tax.
61-3-538 through 61-3-540 reserved.
61-3-541. Repealed.
61-3-542. Repealed.

Part 6 — Penalties—Enforcement

61-3-601. Penalty for violations.
61-3-602. Enforcement.
61-3-603. Penalty for alteration or forgery of certificate of ownership or assignment thereof.
61-3-604. Penalty for altering identification number.
61-3-605. Penalty for nonpayment of sales tax.
61-3-606. Penalty for violation of camper decal requirement.
61-3-607. Penalty for tampering with odometer or violating odometer statement requirements.

Part 7 — Registration of Foreign Vehicles

61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity.
61-3-702. Foreign vehicles to display number plates.
61-3-703. Purpose.
61-3-704. Penalty.
61-3-705 and 61-3-706 reserved.
61-3-707. Foreign vehicles used for transportation in connection with employment.
61-3-708 through 61-3-710 reserved.
61-3-711. Declaration of policy.
61-3-712. Definitions.
61-3-713. Authority of department of transportation.
61-3-714. Authority for reciprocity agreements, provisions, reciprocity standards.

61-3-715. Base state registration reciprocity.
61-3-716. Proportional registration of fleet vehicles.
61-3-717. Declarations of extent of reciprocity.
61-3-718. Extension of reciprocal privileges to lessees authorized.
61-3-719. Automatic reciprocity.
61-3-720. Proportional registration not exclusive.
61-3-721. Proportional registration of fleet vehicles, application, fee formula, and payment.
61-3-722. Registration and identification of proportionally registered vehicles — effect of such registration.
61-3-723. Proportional registration not applicable in a single jurisdiction.
61-3-724. Registration of additional fleet vehicles.
61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting.
61-3-726. New fleet — estimated mileage.
61-3-727. Fleet registration — denial when no reciprocity.
61-3-728. Preservation of proportional registration records.
61-3-729. Relation to other state laws.
61-3-730. Suspension of reciprocity benefits.
61-3-731. Agreements to be written, filed, and available for distribution.
61-3-732. Continued validity of existing reciprocity agreements.
61-3-733. Law supplemental to motor vehicle registration law.

Chapter Cross-References

Confidential license plates and registrations, Title 44, ch. 4, part 2.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Part 1

General Provisions

61-3-101. Duties of department — records. (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, and of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) name of owner, residence address by street or rural route, town, and county, and mailing address if different than residence address;

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and amount due under contract or lien;

(c) manufacturer of vehicle;

(d) manufacturer's designation of style of vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and shipping weight of vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from the county treasurers of the state and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) other index of registration as the department considers expedient.

(4) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(5) In the case of dealers, the records must show the information contained in the application for dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(6) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(7) All records must be open to inspection during all reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information.

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755, R.C.M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; re-en. Sec. 1755, R.C.M. 1935; amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969; amd. Sec. 1, Ch. 214, L. 1971; amd. Sec. 7, Ch. 343, L. 1977; R.C.M. 1947, 53-101; amd. Sec. 26, Ch. 421, L. 1979; amd. Sec. 1, Ch. 15, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 555, L. 1985; amd. Sec. 1, Ch. 236, L. 1991; amd. Sec. 2, Ch. 604, L. 1991; amd. Sec. 2, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 236 in (7) inserted second sentence allowing reasonable restriction of disclosure upon written request of owner.

Chapter 604 in (1), before "dealers", inserted "manufacturers and"; at beginning of (2) deleted "In the case of motor vehicles, trailers, and semitrailers"; in (2)(a), after "residence", inserted "address", after "by" inserted "street or rural route", and at end substituted "mailing address if different than residence address" for "business address"; in (3), in introductory clause after "owners", deleted "thereof in suitable books or on index cards"; in (6), near beginning after "files", inserted "regardless of any other statutory requirements" and near end, after "files", substituted "that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien" for "which have ceased to be of any value"; deleted former (7) that read: "(7) The department may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station"; in (7), near end of first sentence after "cost of", deleted "transcribing" and inserted second sentence allowing Department to require identification; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 724 in (1), before "dealers", inserted "manufacturers and"; in (2)(c) and (2)(g) substituted "vehicle" for "car"; in (2)(d), before "vehicle", deleted "car or"; inserted (2)(j) regarding a holder of a perfected security interest in a vehicle; and made minor changes in style.

Composite Section: In preparing the composite of this section, the Code Commissioner has not codified stylistic changes to subsections (3) and (6) made by Ch. 724, L. 1991, because of conflicts with changes made by Ch. 604, L. 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Cities and towns — power to license, 7-21-4205.

Mobile home or housetrailer — transfer of interest, 61-3-207.

Registration of collectors' items, 61-3-411.

Monopolies in motor vehicle financing, Title 61, ch. 4, part 4.

Drivers' licenses, Title 61, ch. 5.

Accidents on highways — reports, Title 61, ch. 7, part 1.

Weight and size regulations, Title 61, ch. 10.

Motor club service companies, Title 61, ch. 12, part 3.

Motor carriers, Title 69, ch. 12.

61-3-102. Repealed. Sec. 1, Ch. 107, L. 1991.

History: En. 53-122.1 by Sec. 3, Ch. 41, L. 1975; R.C.M. 1947, 53-122.1; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 114, Ch. 370, L. 1987.

61-3-103. Filing of security interests, perfection, rights, procedure, fees. (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, on a form approved by the department, that shows a security interest has been created, has been perfected as provided in this section. The department shall not file any security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) A security interest or other lien, as provided in this section, is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Security interests or other lien filings that do not require transfer of ownership are perfected when received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the department the sum of $1 for each day thereafter that he fails to file such satisfaction.

(9) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(10) It shall not be necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid the department for issuing a

certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department, or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.3, R.C.M. 1935; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965; R.C.M. 1947, 53-110; amd. Sec. 2, Ch. 189, L. 1979; amd. Sec. 1, Ch. 502, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 341, L. 1985; amd. Sec. 1, Ch. 358, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 361, L. 1987; amd. Sec. 3, Ch. 378, L. 1987; amd. Sec. 7, Ch. 398, L. 1989; amd. Sec. 1, Ch. 463, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near end of first sentence, substituted "perfected" for "filed with the department"; in (3), near middle of first sentence after "perfected", deleted "by filing"; in (5) substituted first and second sentences regarding perfection of a security interest for former first sentence that read: "The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest is issued" and at beginning of third sentence substituted "Perfection under this section" for "Issuance of a certificate of ownership" and near middle substituted "date of delivery of the lien notice to the county treasurer" for "time of filing"; and inserted (6) regarding perfection of security interests that do not require transfer of ownership.

Cross-References

Fund structure, 17-2-102.

U.C.C. — filing security interests, Title 30, ch. 9, part 4.

Retail installment sales, Title 31, ch.1, part 2.

Certificate of ownership — issuance, 61-3-202.

Mortgages, pledges, and liens, Title 71.

61-3-104. Repealed. Sec. 1, Ch. 252, L. 1985.

History: En. Sec. 4, Ch. 148, L. 1943; R.C.M. 1947, 53-111; amd. Sec. 2, Ch. 502, L. 1979.

61-3-105. Registrant as prima facie owner of vehicle. For the purpose of this title, except as provided by 61-3-701(3) the person appearing on the public records as the registrant of any motor vehicle shall prima facie be deemed the owner thereof.

History: En. Sec. 5, Ch. 166, L. 1929; re-en. Sec. 1746.4, R.C.M. 1935; R.C.M. 1947, 32-1110; amd. Sec. 27, Ch. 421, L. 1979.

Cross-References

"Owner" defined, 61-1-310.

61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity. (1) It shall be the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make an immediate entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the law enforcement network system (LENS). Failure on the part of any officer shall be considered to be misfeasance in office and shall constitute grounds for removal. Upon entry of such information, LENS and the national crime information center must be allowed immediate access to the state automated stolen vehicle file. It shall also be the duty of LENS to file reports of stolen and recovered motor vehicles reported to it from other states.

(2) The state automated stolen vehicle file must be made available to the secretary of state or other proper official in each state of the United States through access to the national crime information center. Before issuing a certificate of ownership, the department shall check the vehicle identification number on the motor vehicle to be registered against the state automated stolen vehicle file.

(3) Upon written request to an insurer by an authorized governmental agency or upon an insurer's own initiative to notify a specific lienholder, an insurer or an agent authorized by an insurer to act on its behalf shall release to the requesting agency or lienholder relevant information in the insurer's possession relating to any specific motor vehicle theft or motor vehicle insurance fraud.

(4) (a) Except as otherwise provided by law, information furnished pursuant to this section is privileged and may not become part of a public record. The evidence or information is not subject to a subpoena duces tecum in a civil or criminal proceeding unless the court determines after reasonable notice to the parties listed in subsection (4)(b) and a hearing that the public interest and any ongoing investigation by the parties listed in subsection (4)(b) will not be jeopardized by compliance with the subpoena duces tecum.

(b) The notice required by subsection (4)(a) must be sent to an insurer, an agent authorized by an insurer to act on its behalf, an authorized governmental agency that has an interest in the information, and a specific lienholder.

(5) An authorized governmental agency provided with information pursuant to this section may release or provide the information to any other authorized governmental agency.

(6) An insurer, an agent authorized by an insurer to act on its behalf, or an employee of an insurer or agent is not subject to civil or criminal liability in any cause of action for releasing or receiving information under this section.

(7) As used in this section, the following definitions apply:

(a) "Authorized governmental agency" means any duly constituted criminal investigative department or agency of the United States; the state department of justice; the state auditor's office; a peace officer of the state or a political subdivision of the state; or a prosecuting attorney of any state, of any political subdivision of any state, or of the United States or any district of the United States.

(b) "Relevant information" includes but is not limited to:

(i) insurance policy information related to any motor vehicle theft or motor vehicle insurance fraud under investigation, including an application for a policy;

(ii) available policy premium payment records;

(iii) the history of previous claims made by the insured; and

(iv) information relating to the investigation of any motor vehicle theft or motor vehicle insurance fraud, including statements of any person, proof of loss and notice of loss, and any information that an insurer knows or reasonably believes reveals or may reveal the identity of a person who it has reason to believe committed a criminal or fraudulent act relating to a motor vehicle theft or motor vehicle insurance claim or has knowledge of an act that has not been reported to an authorized governmental agency.

(c) "Specific lienholder" means a person or firm that holds a security interest in a motor vehicle involved in a specific motor vehicle theft or motor vehicle insurance fraud.

History: En. Sec. 13, Ch. 113, L. 1925; re-en. Sec. 1763.5, R.C.M. 1935; R.C.M. 1947, 53-137; amd. Sec. 28, Ch. 421, L. 1979; amd. Sec. 1, Ch. 233, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 272, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) relating to release of insurance information; inserted (4) relating to privileged information and exemption from subpoena duces tecum; inserted (5) relating to release of information by governmental agency; inserted (6) relating to immunity from liability for release of information; and inserted (7) providing definitions.

Cross-References

Duties of Secretary of State, 2-15-401.

Duties of Sheriff, 7-32-2121.

Misconduct of undersheriff, 7-32-2129.

Duties of Chief of Police, 7-32-4105.

Role of Police Commission in hearing and deciding charges against policemen, 7-32-4155.

Theft, 45-6-301.

Unauthorized use of motor vehicles, 45-6-308.

61-3-107. Identification number for trailers, campers, and other vehicles. (1) A trailer, semitrailer, housetrailer, or camper that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department.

(2) The department may not issue a certificate of ownership or reissue a certificate of ownership covering a vehicle on which the identification number has been altered, removed, obliterated, defaced, omitted, or is otherwise absent unless the owner or other person lawfully in possession of the vehicle files an application with the department, accompanied by a fee of $5. The application must be on a form provided by the department and must contain information required by the department for the assignment of a special identification number for a vehicle. Upon receipt of the application and if the department is satisfied that the applicant is entitled to the assignment of an identification number, the department shall designate a special identification number for the vehicle. The department shall note the special identification number on the application and on records to be kept by the department. This assigned identification number must be stamped or securely attached in a conspicuous position on the vehicle in the manner and form prescribed by the department.

(3) In a case where the true identity of a vehicle can be established by restoring the original manufacturer's serial number or other distinguishing numbers or identification marks, the department may not assign a special identification number and shall replace the vehicle's identification mark by duplicating the manufacturer's full numeric or alphanumeric identification sequence. The department may replace an identification mark only after conducting an inquiry to determine that ownership of the vehicle bearing a restored identification mark has been lawfully transferred to the applicant. The applicant shall apply for and the department shall replace the identification mark on the vehicle as required under subsection (2).

(4) Upon receipt by the department of a certificate of inspection completed by a peace officer or authorized member of the department verifying that the identification number has been stamped or securely attached in a conspicuous

position upon the vehicle, accompanied by an application for a certificate of ownership and the required fee, the department shall use the number as the numeric or alphanumeric identification mark for the vehicle in any certificate of ownership that may be issued.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; R.C.M. 1947, 53-107(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 272, L. 1991; amd. Sec. 3, Ch. 715, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 272 in (1), after "assigned an identification number by the department", deleted "upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the department upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the department. The department may withhold registration until satisfactory proof by affidavit of such stamping is filed with it"; inserted (2) relating to special identification number, application, and fee; inserted (3) relating to restoring original identification marks; inserted (4) relating to certificate of inspection; and made minor changes in style.

Chapter 715 in (1), in first sentence after "housetrailer", inserted "or camper" and in second sentence, after "upon the", inserted "entrance of the camper or on the" (latter amendment rendered void by Ch. 272); and made minor changes in style.

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section made by Ch. 272, L. 1991, is effective January 1, 1992.

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

Cross-References

Retail installment sales — "manufactured structure" defined, 31-1-202.

61-3-108. Disposition of fees. All fees payable to the department under this title, unless otherwise provided, shall be deposited in the general fund.

History: En. Sec. 34, Ch. 421, L. 1979; En. Sec. 3, Ch. 654, L. 1979; amd. Sec. 1, Ch. 268, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 12, Ch. 503, L. 1985; amd. Sec. 8, Ch. 398, L. 1989.

Cross-References

Fund structure, 17-2-102.

Teletypewriter communications system, Title 44, ch. 2, part 3.

Montana Forensic Science System Act, Title 44, ch. 3.

Law Enforcement Academy, Title 44, ch. 10.

"Department" defined, 61-1-301.

Part 2

Certificates of Ownership

61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership or registration. (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the vehicle in the appropriate space provided, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee of the department, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required by the department, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration; however, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to the certificates.

(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a).

(6) Nothing in subsection (5) prevents a secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment made upon its records.

(7) The certificate of ownership is valid until canceled by the department upon a transfer of any interest shown in the certificate, and annual renewal is not needed.

(8) (a) Upon its determination that a certificate of ownership or a registration receipt contains an error or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney, the department may cancel the certificate of ownership or receipt and, in the case of an error, issue a replacement for the erroneous certificate or receipt if the owner has returned the certificate or receipt to be canceled. If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.

(b) Any person who fails to return a certificate of ownership or a registration receipt that contains an error or that has been canceled by the department due to an insufficient funds check, as provided in subsection (8)(a), after receiving actual notice of the department's demand for the return of the certificate or receipt, as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500.

History: (1) thru (6)En. Subd. 3, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.2, R.C.M. 1935; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969; amd. Sec. 2, Ch. 138, L. 1971; amd. Sec. 1, Ch. 399, L. 1977; Sec. 53-109, R.C.M. 1947; (7)En. Subd. 2, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.1, R.C.M. 1935; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975; Sec. 53-108, R.C.M. 1947; R.C.M. 1947, 53-108(part), 53-109; amd. Sec. 1, Ch. 203, L. 1979; amd. Sec. 29, Ch. 421, L. 1979; amd. Sec. 1, Ch. 324, L. 1985; amd. Sec. 2, Ch. 358, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 104, L. 1989; amd. Sec. 3, Ch. 363, L. 1989; amd. Sec. 3, Ch. 604, L. 1991; amd. Sec. 3, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 604 near end of (1) inserted "an elected official authorized to acknowledge signatures, an employee of the department"; in (3), in last sentence, substituted "U.S. mail" for "post office in Deer Lodge, Montana"; in (8)(a), in four places after reference to certificate of ownership, inserted reference to registration receipt, in first sentence, after "error", substituted "or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney" for "caused by the department" and near end, before "issue", inserted "in the case of an error", and inserted second sentence requiring a peace officer or Department employee to secure and return a certificate, receipt, or plate in certain cases; in (8)(b), in two places after reference to certificate of ownership, inserted reference to registration receipt and after "error" substituted "or that has been canceled by the department due to an insufficient funds check, as provided in subsection (8)(a)" for "caused by the department"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 724 in (1), after "space provided", deleted "upon the reverse side of the certificate"; in (3), near end of first sentence after "form required", substituted "by the department" for "for an original application for a certificate of ownership"; in (4), near middle after "registration", inserted "however, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and"; and made minor changes in style.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Notaries public, Title 1, ch. 5, part 4.

Duties of County Treasurer, 7-6-2111.

Transfer of interest in off-highway vehicle, 23-2-812.

U.C.C. — security interests, Title 30, ch. 9.

Three unit combination — fees in lieu of gross weight fees, 61-10-210.

Intestate succession and wills, Title 72, ch. 2.

61-3-202. Certificate of ownership — issuance — contents — joint ownership — inspection — fees. (1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103.

(2) The certificate of ownership shall contain upon the face thereof:

(a) the date issued;

(b) the name and mailing and residence address of the owner or the names and addresses of joint owners;

(c) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the registered vehicle;

(d) a description of the registered vehicle, including the year built and vehicle identification number;

(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle; and

(f) such other statement of facts as may be determined by the department.

(3) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.

(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application, it may be returned to the owner or to the county treasurer to effectively secure the correction of such error, who shall return the same to the department.

(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department.

(6) A salvage vehicle for which a certificate of ownership is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before a certificate of ownership can be issued. The inspection may not attest to the roadworthiness or safety condition of the vehicle and must be performed by department employees or peace officers designated by the department.

(7) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(8) To defray the cost of the vehicle inspection program, the department shall collect a fee of $18.50 for the inspection of each salvage vehicle for which a certificate of ownership is sought. The fee must be distributed as follows:

(a) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the state treasurer for deposit in the general fund.

(b) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the inspection site that has contractually permitted the use of its facility for the inspection.

(9) (a) An authorized inspector may seize and hold a vehicle:

(i) the inspector has probable cause to believe is stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that does not conform with the vehicle identification number on the certificate of ownership.

(b) A seized vehicle may be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. An authorized inspector may use any means necessary to identify a vehicle by its vehicle identification number or numbers.

(10) The department may not issue a certificate of ownership for a vehicle until the identity of the vehicle is established.

(11) The department may adopt rules for the implementation and administration of the vehicle inspection program.

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; R.C.M. 1947, 53-107(part); amd. Sec. 30, Ch. 421, L. 1979; amd. Sec. 3, Ch. 502, L. 1979; amd. Sec. 3, Ch. 341, L. 1985; amd. Sec. 3, Ch. 358, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 604, L. 1991; amd. Sec. 2, Ch. 725, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 604 in (2)(b), before "address", substituted "mailing and residence" for "complete"; in (4), in second sentence before "county", inserted "owner or to the"; and made minor change in style. Amendment effective July 1, 1991.

Chapter 725 in (2)(d) substituted "vehicle identification number" for "serial number"; inserted (6) concerning issuance of vehicle identification number for salvage vehicle; inserted (7) authorizing a contract for inspection facility; inserted (8) providing for the collection and distribution of a salvage vehicle inspection fee; inserted (9) providing for seizure of certain vehicles; inserted (10) requiring identity of vehicle for issuance of certificate of ownership; and inserted (11) authorizing adoption of rules.

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section made by Ch. 725, L. 1991, is effective January 1, 1992.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Duties of County Treasurer, 7-6-2111.
U.C.C. — security interests, Title 30, ch. 9.
Obscuring identity of machine, 45-6-326.
Liens, Title 71, ch. 3.

61-3-203. Fee for original certificate of ownership and transfer of registration — disposition. A charge of $5 must be made for issuance of an original certificate of ownership of title and for a transfer of registration which must be collected by the county treasurer. The fees must be distributed as follows:

(1) $3.50 of each fee must be remitted to the department by the county treasurer, as provided in 15-1-504, for each application for original certificate of ownership or transfer of registration.

(2) Each March the county commissioners of each county shall divide the fees retained by the county to:

(a) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

(b) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.4, R.C.M. 1935; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965; amd. Sec. 2, Ch. 41, L. 1975; R.C.M. 1947, 53-112; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 361, L. 1987; amd. Sec. 1, Ch. 378, L. 1987; amd. Sec. 7, Ch. 535, L. 1989.

Cross-References

Duties of County Treasurer, 7-6-2111.
Fees of County Treasurer, 7-6-2131.
City and county road funds, 7-14-2512.

61-3-204. Lost certificates. In the event any certificate of ownership is lost, mutilated, or becomes illegible, the owner shall immediately make application for and obtain a duplicate thereof, upon furnishing satisfactory evidence of such facts and upon payment of a fee of $3. Revenue from this fee must be deposited in the general fund.

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.5, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965; R.C.M. 1947, 53-113(part); amd. Sec. 1, Ch. 654, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 378, L. 1987; amd. Sec. 9, Ch. 398, L. 1989.

Cross-References

Fund structure, 17-2-102.

61-3-205. Transfer of ownership of vehicles by insurance company. (1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a certificate of ownership signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, or a notary public.

(2) If the certificate of ownership names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest.

History: En. Sec. 1, Ch. 12, L. 1981; amd. Sec. 4, Ch. 363, L. 1989; amd. Sec. 4, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Near end of (1), after "acknowledged", inserted "by the registered owner or owners".

Cross-References

U.C.C. — security interests, Title 30, ch. 9.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ownership the odometer reading at the time of transfer or, if the certificate of ownership does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print his name on the written statement, and that contains the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the vehicle year, make, model, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of his knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, he shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing his name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vehicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless such vehicle has been used as a demonstrator;

(d) a vehicle having a gross weight rating of more than 16,000 pounds; or

(e) a vehicle sold directly by the manufacturer to an agency of the United States.

(4) A dealer or wholesaler licensed under 61-4-101 shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains.

History: En. Sec. 2, Ch. 324, L. 1985; amd. Sec. 1, Ch. 23, L. 1989; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 5, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments — Code Commissioner Instruction: The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Chapter 724 near end of (1), after "seller", inserted "who shall also print his name on the written statement"; at end of (2) inserted "and printing his name on the disclosure statement"; and made minor changes in style.

Cross-References

Transfer of interest in motor vehicle, 61-3-201.

Tampering with odometer of motor vehicle — misdemeanor, 61-3-607.

61-3-207. Mobile home or housetrailer — transfer of interest. (1) Upon a transfer of any interest in a mobile home or housetrailer under the provisions of this chapter, the application for the transfer shall be made through the county treasurer's office in the county in which the mobile home or housetrailer is located at the time of the transfer.

(2) When a mobile home or housetrailer is sold under contract or under such conditions that title is not immediately conveyed, the parties to the transaction shall immediately file with the county clerk and recorder a notice of intention to transfer title. The notice must indicate the name of the party who is thereafter responsible for payment of taxes upon the mobile home or housetrailer. The clerk and recorder shall immediately notify the county assessor of the information in the notice. The penalty provisions of 61-3-201(2) do not apply if the notice of intent to transfer is filed with the county clerk and recorder within 20 days after the transfer.

History: En. Sec. 1, Ch. 555, L. 1985.

Cross-References

Duties of County Clerk, 7-4-2611.

Documents subject to recording by County Clerk, 7-4-2613.

For purpose of chapter 3, definition of "motor vehicle" includes housetrailer, 61-1-102.

"Housetrailer" defined, 61-1-501.

61-3-208. Affidavit and bond for certificate. (1) If an applicant for a motor vehicle certificate of title cannot provide the department with a certificate of title transferred to the applicant, the department may issue a certificate of title for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department.

(2) The affidavit must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and include:

(a) the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle;

(b) information as required by the department to enable it to determine what security interests, liens, and encumbrances against the motor vehicle, if any, are outstanding against the motor vehicle;

(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and

(d) a statement that the applicant has the right to have a certificate of title issued.

(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the motor vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:

(a) in an amount equal to the value of the motor vehicle as determined under the provisions of 61-3-503(1)(c) for the year in which the application for certificate of title is made;

(b) conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle, and any respective successors in interest, against expenses, losses, or damages caused by the issuance of the certificate or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle.

(4) Any interested person has a right of action to recover on the bond for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(5) Unless the department has been notified of a pending action to recover the bond, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer registered in this state.

History: En. Sec. 1, Ch. 578, L. 1989.

Cross-References

U.C.C. — security interests, Title 30, ch. 9.

61-3-209 reserved.

61-3-210. Definitions. As used in this part, the following definitions apply:

(1) "Cab" means the passenger compartment of a common truck or pickup truck. It is a unit of construction that includes the top or roof and the cowl and may or may not include glass, instrumentation, the steering column, and a seat or seats.

(2) "Center structure" includes the section of either a unibody or frame-type passenger vehicle that consists of a unit of sheet metal that extends from the firewall to the back of the rear seat or the centerline of the rear wheels. The structure may comprise the roof, side and rear window posts, cowl panel, dash panel, floor pans, doors, and rocker panels if two or more of these parts are assembled together as one unit.

(3) "Component part" means the front-end assembly, center structure, or tail section of an automobile, the cab of a truck, the bed of a 1-ton or lighter truck, the frame of a vehicle, or any part of a vehicle that contains a vehicle identification number or a derivative of a vehicle identification number.

(4) "Frame" means the structure that supports the automobile body and other external component parts.

(5) "Front-end assembly" includes the hood, right front and left front fenders, grill, bumper, and radiator supports if two or more of these parts are assembled together as one unit forward of the firewall.

(6) "Salvage certificate" means a certificate of ownership issued by the department for a salvage vehicle that may be used to retitle the vehicle.

(7) "Salvage vehicle" means a vehicle damaged by collision, fire, flood, accident, trespass, or other occurrence to the extent that the owner, an insurer, or other person acting on behalf of the owner determines that the cost of parts and labor makes it uneconomical to repair the vehicle.

(8) "Salvage vehicle purchaser" means a person, other than an insurer, who purchases or otherwise obtains possession of a salvage vehicle.

(9) "Tail section" includes the floor pan, right rear and left rear quarter panels, deck lid, upper rear and lower rear panels, and rear bumper if two or more of these parts are assembled together as one unit.

(10) "Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle.

History: En. Sec. 1, Ch. 725, L. 1991.

61-3-211. Surrender of certificate of ownership — issuance of salvage certificate — salvage retitling requirements. (1) An insurer acquiring ownership of a vehicle that is less than 5 years of age that he determines to be a salvage vehicle shall surrender the certificate of ownership to the department within 15 days after acquiring the certificate. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of ownership, the insurer shall apply for a salvage certificate on a form prescribed by the department. If the certificate of ownership names one or more holders of a perfected security interest in the vehicle, the insurer shall secure and deliver to the department a release from each secured party of the secured interest.

(2) Upon receipt of a properly executed certificate of ownership and a salvage certificate application from an insurer, the department shall issue a salvage certificate to the insurer within 5 working days of the date of receipt of the application. Upon receipt of a salvage certificate issued by the department, an insurer may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. The salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(3) If the insurer sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of ownership, the insurer shall complete a salvage receipt on a form prescribed by the department. The insurer shall deliver the original salvage receipt to the salvage vehicle purchaser only after obtaining a clear title and lien release. Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department. The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of ownership to the department. Upon receipt of the certificate of ownership from the insurer and the application from the salvage vehicle purchaser, the department shall issue a salvage certificate to the salvage vehicle purchaser that is prima facie evidence of ownership.

(4) If an insurer determines that a salvage vehicle will remain with the owner after an agreed settlement, the insurer shall notify the department of the settlement on a form prescribed by the department. Upon receipt of the notice, the department may require the owner to surrender the certificate of ownership in compliance with this part, regardless of whether ownership of the salvage vehicle was obtained in a jurisdiction not requiring the surrender of the certificate of ownership or a comparable ownership document.

(5) At the time of surrender of a certificate of ownership for a salvage vehicle not acquired by an insurer, the department shall issue a salvage certificate to the owner. Upon receipt of a salvage certificate issued by the department to a noninsurer, the owner may possess, retain, transport, sell, transfer, or otherwise dispose of the salvage vehicle. A salvage certificate is prima facie evidence of ownership of a salvage vehicle.

(6) A fee of $5 must be paid to the department for the issuance of a salvage certificate.

(7) A salvage vehicle owned by or in the inventory of a motor vehicle wrecking facility on October 1, 1991, is exempt from the provisions of this section if the owner of the facility has complied with the provisions of 75-10-513(2).

History: En. Sec. 3, Ch. 725, L. 1991.

61-3-212. Retitling salvage vehicles — penalty. (1) Prior to operating a salvage vehicle on the roads and highways of this state, the owner shall present the vehicle and the salvage certificate, if one has been issued, or the certificate of ownership, the appropriate receipts or bills of sale establishing ownership, and the source of component parts used to rebuild the vehicle to a department employee or designated peace officer for inspection at a regional inspection site authorized under 61-3-202(7). An owner may obtain a 72-hour temporary registration permit from the department or its designee for the purpose of moving a salvage vehicle to and from the designated inspection site.

(2) (a) The inspector shall inspect the vehicle to verify the identity of the vehicle.

(b) The inspector shall verify that the component parts used to rebuild the vehicle are evidenced by traceable receipts or bills of sale and that there are no indications the vehicle or any of its parts are stolen. Documentation provided by the owner or employee of a wrecking facility licensed under the provisions of Title 75, chapter 10, part 5, is prima facie evidence of the facts stated in the documentation.

(3) Following inspection and prior to operating the vehicle on the roads and highways of this state, the owner shall apply for a new certificate of ownership by submitting the application, the salvage certificate, receipts or bills of sale, and a copy of the inspection report to the department.

(4) Upon receipt of the application, required documentation, and payment of the fee for a salvage vehicle required in 61-3-202(8), the department shall issue a new certificate of ownership.

(5) A person failing to comply with the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed $500. The salvage vehicle purchaser shall produce the salvage certificate upon request of a public official legally entitled to request the certificate. A person may not operate or use a salvage vehicle on the roads or highways of this state except when a permit has been issued.

History: En. Sec. 4, Ch. 725, L. 1991.

Part 3

Registration

Part Cross-References

Centennial plates, Title 2, ch. 89, part 3.

Authorization to issue confidential plates and registration, Title 44, ch. 4, part 2.

61-3-301. *(Temporary)* **Registration — license plate required — display.** (1) Except as otherwise provided in this chapter, no person may operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, quadricycles, motorcycles, and vehicles authorized in 61-4-102(6) to display demonstrator plates may have but one number plate conspicuously displayed on the rear. No person may display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) No person may purchase or display on a vehicle a license plate bearing the number assigned to any county as provided in 61-3-332 other than the county of his permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to taxation under 61-3-520.

(5) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty prescribed in 61-3-601. *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

61-3-301. *(Effective January 1, 1994)* **Registration — license plate required — display.** (1) Except as otherwise provided in this chapter, no person may operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, quadricycles, motorcycles, and vehicles authorized in 61-4-102(6) to display demonstrator plates may have but one number plate conspicuously displayed on the rear. No person may display on a vehicle at the same time a number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) No person may purchase or display on a vehicle a license plate bearing the number assigned to any county as provided in 61-3-332 other than the county of his permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate so issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty prescribed in 61-3-601.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.5, R.C.M. 1935; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969; amd. Sec. 1, Ch. 18, L. 1974; R.C.M. 1947, 53-119; amd. Sec. 31, Ch. 421, L. 1979; amd. Sec. 15, Ch. 516, L. 1985; amd. Sec. 1, Ch. 148, L. 1989; amd. Sec. 4, Ch. 525, L. 1989.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

Number plates, 61-3-332.

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden. It shall especially be provided that a resident of the state of Montana shall not operate a motor vehicle under a license issued by any other state than Montana.

History: En. Subd. 8, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.6, R.C.M. 1935; amd. Sec. 2, Ch. 195, L. 1953; amd. Sec. 1, Ch. 247, L. 1957; R.C.M. 1947, 53-121.

Cross-References

Residence — rules for determining, 1-1-215.

Foreign vehicles to display number plates, 61-3-702.

61-3-303. Application for registration. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the owner makes his permanent residence at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity; and

(d) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) unless it has been previously paid:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department or its agent may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year, if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department or its agent may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the department or its agent.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(1), (3); amd. Sec. 4, Ch. 502, L. 1979; amd. Sec. 7, Ch. 712, L. 1979; amd. Sec. 23, Ch. 614, L. 1981; amd. Sec. 1, Ch. 433, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 516, L. 1985; amd. Sec. 4, Ch. 421, L. 1987; amd. Sec. 21, Ch. 611, L. 1987; amd. Sec. 6, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (1)(d) that read: "(d) in case of reregistration, the license number for the preceding year"; and made minor changes in style.

Cross-References

Duties of County Treasurer, 7-6-2111.

Fees of County Treasurer, 7-6-2131.

Suspension of property taxes for persons in military service, 10-1-606.

Motor vehicle assessment, 15-8-202.

Property tax levies, Title 15, ch. 10.

U.C.C. — security interests, Title 30, ch. 9.

Issuance of collegiate license plates, 61-3-465.

Schedule of fees for motor homes, 61-3-522.

Schedule of fees for travel trailers and campers, 61-3-523.

61-3-304. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 4, Ch. 158, L. 1931; amd. Sec. 5, Ch. 158, L. 1933; amd. Sec. 1, Ch. 13, Ex. L. 1933; re-en. Sec. 1755.2, R.C.M. 1935; amd. Sec. 1, Ch. 88, L. 1943; R.C.M. 1947, 53-103; amd. Sec. 1, Ch. 503, L. 1985.

61-3-305. Blanks to be provided. It is the duty of the department to provide blank application forms and to furnish these upon request to applicant for registration.

History: En. Sec. 2, Ch. 75, L. 1917; re-en. Sec. 1756, R.C.M. 1921; re-en. Sec. 1756, R.C.M. 1935; amd. Sec. 2, Ch. 88, L. 1943; R.C.M. 1947, 53-105; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: After "forms" deleted "outlining and providing for the information needed in each class of registration required"; and made minor change in style.

Cross-References

Duties of Department of Justice, 61-3-101.

61-3-306 through 61-3-310 reserved.

61-3-311. Time for making application. Registration must be renewed annually and license fees paid annually. Except as provided in 61-3-313 through 61-3-316 and 61-3-526, all registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, the motor vehicle must be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.1, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969; amd. Sec. 13, Ch. 74, L. 1975; R.C.M. 1947, 53-115; amd. Sec. 2, Ch. 146, L. 1989.

Cross-References

Issuance of collegiate license plates, 61-3-465.

61-3-312. Renewal of registration. (1) Except as provided in 61-3-314 and 61-3-526, every vehicle registration under this chapter shall expire on December 31 of each year and must be renewed annually upon application and payment of license fees as provided in 61-3-303 and 61-3-321. The renewal takes effect on January 1 of each year. The certificate of registration is valid only during the registration year for which issued.

(2) The owner of a vehicle registered under the provisions of this section is entitled to operate the vehicle between January 1 and February 15 without displaying the registration certificate of the current year, on condition that the owner shall, during the period, display upon the vehicle the number plates or plate assigned for the previous year.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.1, R.C.M. 1935; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969; amd. Sec. 1, Ch. 138, L. 1971; amd. Sec. 2, Ch. 214, L. 1971; amd. Sec. 11, Ch. 74, L. 1975; R.C.M. 1947, 53-108(part); amd. Sec. 3, Ch. 146, L. 1989.

Cross-References

Issuance of collegiate license plates, 61-3-465.

61-3-313. Vehicles subject to staggered registration. For purposes of 61-3-313 through 61-3-316 "vehicle" means any motor vehicle as defined in 61-1-102 subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c), 61-3-411, or 61-3-421;

(4) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318.

History: En. 53-154 by Sec. 1, Ch. 74, L. 1975; R.C.M. 1947, 53-154; amd. Sec. 1, Ch. 82, L. 1979; amd. Sec. 17, Ch. 516, L. 1985; amd. Sec. 2, Ch. 517, L. 1989; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: In (3) substituted "61-3-332(10)(c)" for "61-3-451"; and made minor change in style.

Cross-References

Motor vehicle assessment, 15-8-202.
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.
Fleet registration period, 61-3-318.
Assessment, 61-3-503.
Taxes — rules, 61-3-506.
Taxes — exemption, 61-3-507.

Standards of maximum dimensions, weights, etc., 61-10-101.

61-3-314. Registration period. (1) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There are 12 registration periods, each of which commences on the first day of a calendar month. The periods are:

(a) January 1 through January 31	1st period
(b) February 1 through February 28/29	2nd period
(c) March 1 through March 31	3rd period
(d) April 1 through April 30	4th period
(e) May 1 through May 31	5th period
(f) June 1 through June 30	6th period
(g) July 1 through July 31	7th period
(h) August 1 through August 31	8th period
(i) September 1 through September 30	9th period
(j) October 1 through October 31	10th period
(k) November 1 through November 30	11th period
(l) December 1 through December 31	12th period

History: En. 53-155, 53-156 by Secs. 2, 3, Ch. 74, L. 1975; R.C.M. 1947; 53-155, 53-156; amd. Sec. 1, Ch. 337, L. 1991; amd. Sec. 5, Ch. 604, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 337 in (1) substituted "each vehicle" for "commencing January 1, 1976, all vehicles"; near beginning of (2) increased registration periods from 10 to 12; inserted (2)(k) creating 11th registration period; inserted (2)(l) creating 12th registration period; deleted (3) that read: "(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following"; and made minor changes in style.

Chapter 604 in (1), before "all", deleted "commencing January 1, 1976"; near beginning of (2) increased registration periods from 10 to 12; inserted (2)(k) creating 11th registration period; inserted (2)(l) creating 12th registration period; and deleted (3) that read: "(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following". Amendment effective July 1, 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Vehicle and property taxes — when due, 61-3-501.

61-3-315. Reregistration on anniversary date — department to make rules. A vehicle that has once been registered for any of the periods designated in 61-3-314 must thereafter be reregistered for a like period on or before the anniversary date of the initial registration unless that period is changed as provided in this section. The anniversary date for reregistration is the last day of the month for the designated registration period. The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles. The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register his vehicles.

History: **En. 53-157 by Sec. 4, Ch. 74, L. 1975; amd. Sec. 1, Ch. 183, L. 1977; R.C.M. 1947, 53-157; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 64, L. 1989.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Motor vehicle assessment, 15-8-202.

Assessment, 61-3-503.

Taxes — rules, 61-3-506.

Taxes — exemption, 61-3-507.

61-3-316. New registrations under staggered registration. Vehicles which are registered for the first time in this state shall be assigned a registration period corresponding to when they are first registered in this state. The registration period for a vehicle shall thereafter remain the same from year to year.

History: **En. 53-158 by Sec. 5, Ch. 74, L. 1975; R.C.M. 1947, 53-158(part).**

Cross-References

Motor vehicle assessment, 15-8-202.

Assessment, 61-3-503.

Taxes — rules, 61-3-506.

Taxes — exemption, 61-3-507.

61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided herein, the new owner of a transferred motor vehicle shall have a grace period of 20 calendar days from the date of purchase to make application and pay the taxes or fees, or both, provided by part 5 of this chapter, unless the tax or fee has been paid for the year, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335. Failure to make application within the time provided herein subjects the purchaser to a penalty of $10. The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law.

History: **En. Sec. 3, Ch. 127, L. 1969; amd. Sec. 7, Ch. 138, L. 1971; amd. Sec. 1, Ch. 187, L. 1974; amd. Sec. 4, Ch. 243, L. 1977; amd. Sec. 4, Ch. 399, L. 1977; R.C.M. 1947, 53-147; amd. Sec. 32, Ch. 421, L. 1979; amd. Sec. 8, Ch. 712, L. 1979; amd. Sec. 24, Ch. 614, L. 1981; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 1, Ch. 529, L. 1985.**

Cross-References

Duties of County Treasurer, 7-6-2111.

61-3-318. Fleet registration period. (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its motor vehicles for a 6-month period, commencing from the date of original registration.

(b) A vehicle remaining in the fleet at the end of a 6-month period must be reregistered for a minimum of 12 months.

(2) As used in this section, "fleet" means more than 25 automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet.

History: En. Sec. 1, Ch. 517, L. 1989.

Cross-References

Vehicles subject to staggered registration — fleet vehicles excepted, 61-3-313.

Sales tax on new fleet vehicles, 61-3-502.

Computation of tax of fleet vehicles, 61-3-504.

61-3-319 and 61-3-320 reserved.

61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees. (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses are classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except passenger cars, used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of $5.25 per year for each registration of a vehicle must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall distribute 25 cents from

the motor vehicle registration fee for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

History: (1) thru (4), (6), (7)En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; Sec. 53-122, R.C.M. 1947; (5)En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R.C.M. 1921; amd. Sec. 2, Ch. 158, L. 1933; re-en. Sec. 1757, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977; Sec. 53-106, R.C.M. 1947; R.C.M. 1947, 53-106(part), 53-122(part); amd. Sec. 33, Ch. 421, L. 1979; amd. Sec. 7, Ch. 508, L. 1979; amd. Sec. 2, Ch. 654, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 18, Ch. 516, L. 1985; amd. Sec. 4, Ch. 378, L. 1987; amd. Sec. 10, Ch. 398, L. 1989; amd. Sec. 8, Ch. 535, L. 1989; amd. Sec. 2, Ch. 627, L. 1989; amd. Sec. 2, Ch. 654, L. 1989; amd. Secs. 3, 5, Ch. 567, L. 1991; amd. Sec. 2, Ch. 735, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 567 in (5) increased fee from $5.25 to $5.50 (increase did not become effective pursuant to sec. 5, Ch. 567) and inserted fourth sentence requiring Department to distribute 25 cents from motor vehicle registration fee for payment of supplemental benefits provided in 19-6-709. Amendment effective July 1, 1991.

Chapter 735 in (5) reduced fee from $5.25 to $5 (reduction did not become effective pursuant to sec. 5, Ch. 567) and deleted former third sentence that read: "The department of justice shall distribute 25 cents from each fee collected to the highway patrol retirement fund". Amendment effective July 1, 1991.

Coordination Instruction: Section 5, Ch. 567, L. 1991, a coordination section, amended 61-3-321(5) and provided: "If Senate Bill No. 192 is passed and approved [approved May 1, 1991, as Ch. 735], the motor vehicle registration fee is $5.25, and 25 cents must be distributed to fund the supplemental benefits provided for in [section 1] [19-6-709]."

Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account."

Cross-References

Duties of County Treasurer, 7-6-2111.

Fund structure, 17-2-102.

Motorcycles and quadricycles used for recreation — decal required, 23-2-804.

"Motorcycle" defined, 61-1-105.

"Truck tractor" defined, 61-1-108.

"Quadricycle" defined, 61-1-133.

Proportional registration of fleet vehicles, 61-3-721.

Single movement permit, 61-4-310.

Permits issued to governmental entities, 61-10-127.

Three unit combination — fees in lieu of gross weight fees, 61-10-210.

61-3-322. Certificates of registration — issuance. (1) Upon completion of the application for registration on forms furnished by the department, the county treasurer shall file one copy in his office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof the information described in 61-3-202(2).

(3) Every owner, upon receiving a registration receipt, shall write his signature on the receipt with pen and ink in the space provided. The registration receipt, a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of the vehicle, who shall display it upon demand of a police officer or any officer or employee of the department or the transportation department.

(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.

(5) It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt.

History: (1) thru (3)En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R.C.M. 1921; amd. Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758, R.C.M. 1935; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969; amd. Sec. 1, Ch. 179, L. 1971; amd. Sec. 1, Ch. 104, L. 1975; Sec. 53-107, R.C.M. 1947; (4), (5)En. Subd. 3, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.2, R.C.M. 1935; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955; Sec. 53-116, R.C.M. 1947; R.C.M. 1947, 53-107(part), 53-116(part); amd. Sec. 35, Ch. 421, L. 1979; amd. Sec. 5, Ch. 502, L. 1979; amd. Sec. 9, Ch. 712, L. 1979; amd. Sec. 25, Ch. 614, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 363, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Duties of County Treasurer, 7-6-2111.

Penalty for violations, 61-3-601.

Used motor vehicles — transfer to and from dealers, 61-4-111.

Excess weight — penalties, 61-10-233.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-3-323. Definitions. As used in 61-3-323 through 61-3-325, unless the context requires otherwise, the following definitions apply:

(1) "Domicile" means the county in which a motor vehicle is most frequently used, dispatched, or controlled.

(2) "Fleet" means 100 or more motor vehicles owned or leased by a person operating the vehicles in this state.

History: En. Sec. 1, Ch. 61, L. 1989.

61-3-324. Fleet registration — application — additions to and deletions from fleet. (1) A person owning or leasing a fleet may apply to the department of transportation to register the fleet annually through the department of transportation in lieu of registering each motor vehicle in its domicile.

(2) The application for fleet registration must:

(a) be submitted to the department of transportation prior to November 1 of each year;

(b) include a list of the motor vehicles in the fleet;

(c) include the current registration receipt for each motor vehicle; and

(d) include any other relevant information required by the department of transportation.

(3) A motor vehicle may be added to the fleet.

(4) A motor vehicle may be removed from a fleet if the owner of the fleet surrenders to the department of transportation the current registration receipt and the license plate for the vehicle no later than December 31. If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why he is not able to surrender the receipt or license plate.

History: En. Sec. 2, Ch. 61, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-3-325. Vehicles subject to staggered registration — fees and taxes — disposition. (1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of transportation shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department of transportation shall compute fees and taxes due on each motor vehicle in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department of transportation shall also collect a registration fee of $7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain $4.50 of each registration fee for administrative costs and forward the remaining $3 to the state treasurer for deposit in the general fund in lieu of the fee provided in 61-3-321(5).

(c) All fees and taxes must be paid no later than February 15 each year.

(d) The fees and taxes collected must be distributed by the department of transportation as provided in 61-3-321 and part 5 of this chapter, based on the domicile of each motor vehicle.

History: En. Sec. 3, Ch. 61, L. 1989; amd. Sec. 14, Ch. 398, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-3-326 through 61-3-330 reserved.

61-3-331. Assignment of number plates. The county treasurer shall, at the time of issuing a registration receipt under 61-3-322, assign such motor vehicle a distinctive number, viz., the license plate number, and deliver to the applicant two license plates, as received from the department, which shall bear such distinctive numbers. The department shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January 1 of each year.

History: En. Subd. 3, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.2, R.C.M. 1935; amd. Sec. 3, Ch. 72, L. 1937; amd. Sec. 1, Ch. 199, L. 1955; R.C.M. 1947, 53-116(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

Duties of Department of Justice, 61-3-101.

61-3-332. *(Temporary)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on such license plates, and the word "Montana" and the year must be placed across the plates. Such registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal

order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and no year number may be indicated thereon because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater,

32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue one set of national guard plates, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if he was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of his qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Each veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person. *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)*

61-3-332. *(Effective July 1, 1996)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, number plates must be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana must be used as a distinctive border on such license plates, and the word "Montana" and the year must be placed across the bottom of the plates. Such registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other

similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings in this section provided, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and no year number may be indicated thereon because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder

River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters “NG”. The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue one set of national guard plates, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters “DV”.

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by his service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if he was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of his qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Each veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R.C.M. 1921; amd. Sec. 2, Ch. 158, L. 1933; re-en. Sec. 1757, R.C.M. 1935; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969; amd. Sec. 1, Ch. 226, L. 1971; amd. Sec. 1, Ch. 41, L. 1975; amd. Sec. 1, Ch. 390, L. 1975; amd. Sec. 1, Ch. 243, L. 1977; amd. Sec. 3, Ch. 492, L. 1977; R.C.M. 1947, 53-106(part); amd. Sec. 26, Ch. 614, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 516, L. 1985; amd. Sec. 4, Ch. 674, L. 1985; amd. Sec. 22, Ch. 611, L. 1987; amd. Sec. 1, Ch. 654, L. 1989; amd. Sec. 2, Ch. 632, L. 1991.

Compiler's Comments

1991 Amendment: Section 2, Ch. 632, L. 1991, a coordination instruction with other bills providing for special license plates, amended this section as follows: in (1), in second sentence, increased number of series of plates from 8 to 10 and at end inserted "one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates"; in (6)(b) inserted last sentence providing for replacement of plates only when physical condition requires; inserted (10) providing that special plates are subject to general rules and providing designations for plates for the national guard, reserve armed forces, disabled veterans, prisoners of war, Pearl Harbor survivors, veterans, veterans awarded the purple heart, and handicapped persons; and made minor changes in style.

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section is effective January 1, 1992.

Coordination Instruction: The amendment to this section in sec. 8, Ch. 724, L. 1991, was voided by sec. 2, Ch. 632, L. 1991, a coordination instruction.

Cross-References

Creation of new counties, Title 7, ch. 2, parts 22 and 23.

Tax-exempt property categories, 15-6-201.

"Motorcycle" defined, 61-1-105.

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Road tractor" defined, 61-1-110.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Quadricycle" defined, 61-1-133.

Duties of Department of Justice, 61-3-101.

Special license plates for disabled veterans, handicapped persons, and ex-prisoners of war, 61-3-446, 61-3-452, 61-3-453.

Collegiate license plates, 61-3-463.

Assignment of dealer plates, 61-4-103.

61-3-333. Replacing number plates. In the event of loss, mutilation, or destruction of number plates, and/or validation devices, the owner of the registered motor vehicle may obtain from the department duplicates or replacements of the number plates upon filing sworn declaration showing that fact and payment of a fee of $2. In the event of loss, mutilation, or destruction of pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of $5.

History: En. Subd. 7, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.6, R.C.M. 1935; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969; amd. Sec. 3, Ch. 226, L. 1971; R.C.M. 1947, 53-120; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 9, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "duplicates", inserted "or replacements of the number plates"; and made minor changes in style.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

61-3-334. Expiration of registration on transfer of ownership of vehicle — duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969; R.C.M. 1947, 53-145.

Cross-References

Penalty for violations, 61-3-601.

61-3-335. Transfer of license plates to another motor vehicle. (1) Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is registered, upon a form to be prepared and furnished by the department, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within 20 days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

(2) License plates may be transferred pursuant to this section without transferring ownership of the first vehicle.

(3) Upon transfer of the license plates, the registration of the motor vehicle from which the license plates were transferred expires. The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer.

History: En. Sec. 2, Ch. 127, L. 1969; amd. Sec. 6, Ch. 138, L. 1971; amd. Sec. 3, Ch. 243, L. 1977; R.C.M. 1947, 53-146; amd. Sec. 1, Ch. 106, L. 1979; amd. Sec. 1, Ch. 415, L. 1979; amd. Sec. 27, Ch. 614, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

61-3-336. Recycling license plates. The department is authorized to promote the recycling of used or outdated license plates for the metal content and may enter into contractual agreements with nonprofit organizations for the collection of used or outdated license plates and for their transportation to a central recycling point.

History: En. Sec. 1, Ch. 96, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Public contracts generally, Title 18, ch. 1.

Motor vehicle recycling and disposal, Title 75, ch. 10, part 5.

61-3-337 through 61-3-340 reserved.

61-3-341. Lost certificates. In the event any certificate of registration shall be lost, mutilated, or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the department of such facts and upon payment of a fee of $2.

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; re-en. Sec. 1758.5, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965; R.C.M. 1947, 53-113(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

Certificates of ownership — lost certificates, 61-3-204.

61-3-342. Temporary window sticker. (1) Any purchaser of a motor vehicle who is unable to fully complete the process of applying for a Montana title at the time he makes application for registration or reregistration of the vehicle because the certificate of ownership is lost, in the possession of third parties, or in the process of reissuance in this state or elsewhere may, upon making affidavit to that effect upon a form prescribed by the department and upon the payment of all applicable fees and taxes, plus an additional fee of $2 to be collected by the county treasurer and remitted to the department, obtain from the county treasurer of the county in which the vehicle is to be registered a temporary window sticker of such size, color, and design as the department may prescribe, to be validated by the county treasurer for a period of 60 days from the date of issuance. The purchaser, upon displaying the sticker on the upper left-hand corner of the rear window of the motor vehicle, may operate the vehicle during the period for which the window sticker has been validated without displaying the registration certificate or number plates or plate for the current year. The county treasurer may not sell, and no person may purchase, more than one 60-day temporary window sticker for any vehicle, the ownership of which has not changed since the issuance of the previous 60-day window sticker.

(2) A vehicle for which an application for title cannot be completed may not be registered by the county treasurer nor may license plates for the vehicle be issued by the county treasurer until the completed certificate of ownership or application for title is presented for the purpose of transferring ownership.

(3) In the event an unusual circumstance prevents the owner of a vehicle from presenting the certificate of ownership within the 60-day period permitted under subsection (1), the owner may apply to the motor vehicle division for an extended temporary window sticker on an application form provided by the division. The form must be accompanied by the title application.

(4) Upon receipt of an application for an extended temporary window sticker and title as designated in subsection (3), the motor vehicle division or the county treasurer, with the authorization of the motor vehicle division, may issue an extended temporary window sticker, valid for an additional 60 days, upon payment of a fee of $10 that must be deposited in the general fund. At

the end of the extended 60-day period or in the event the request for extension is rejected by the department for cause, the owner may obtain a certificate of ownership by the method provided in 61-3-208.

History: En. Sec. 5, Ch. 138, L. 1971; R.C.M. 1947, 53-109.3; amd. Sec. 28, Ch. 614, L. 1981; amd. Sec. 1, Ch. 209, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 6, Ch. 604, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning of first sentence after "unable to", substituted "fully complete the process of applying for a Montana title" for "obtain license plates from the county treasurer" and near middle, after "payment of", substituted "all applicable fees and taxes, plus an additional fee" for "a fee"; inserted (2) requiring completed certificate of ownership or application for title prior to registration or issuance of license plates; and inserted (3) and (4) regarding issuance of an extended temporary window sticker. Amendment effective July 1, 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Duties of County Treasurer, 7-6-2111.

Fees of County Treasurer, 7-6-2131.

Department of Justice — disposition of fees, 61-3-108.

Penalty for violations, 61-3-601.

61-3-343 and 61-3-344 reserved.

61-3-345. County motor vehicle computer system. (1) The department shall maintain a statewide on-line computer system to be used to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles.

(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of administration, data processing division, selected by the division administrator;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) a county assessor, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general.

History: En. Sec. 12, Ch. 604, L. 1991.

Compiler's Comments

Appropriation: Section 16, Ch. 604, L. 1991, provided: "There is appropriated from the general fund to the department of justice $639,300 in fiscal year 1992 and $837,900 in fiscal year 1993 to fund the continued development and operation of the statewide motor vehicle computer system."

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

61-3-346. County motor vehicle computer committee. (1) There is a county motor vehicle computer committee.

(2) The committee is allocated to the department of justice for administrative purposes only as provided in 2-15-121.

(3) The committee consists of:

(a) an employee of the information service division of the department of administration, appointed by the director of the department of administration;

(b) two county treasurers, appointed by the Montana county treasurers association; and

(c) two employees of the department of justice, appointed by the attorney general.

History: En. Sec. 13, Ch. 604, L. 1991.

Compiler's Comments

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

61-3-347. Duties of county motor vehicle computer committee. (1) The county motor vehicle computer committee shall:

(a) establish the requirements and specifications for the county motor vehicle computer system to be used by county treasurers and the department of justice to register and reregister motor vehicles, boats, snowmobiles, and off-highway vehicles;

(b) approve the purchase of computer equipment, including peripherals, to be used for the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles;

(c) approve the procedures for the development of the county motor vehicle computer system provided for in 61-3-345 and for training in the use of that system.

(2) As used in this section, "computer system" means the county motor vehicle application system and does not include the central computer centers

or imply that the department of administration is responsible for establishing policy and operating and maintaining central computer centers.

History: En. Sec. 14, Ch. 604, L. 1991.

Compiler's Comments

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Part 4

Special Registration

Part Cross-References

Centennial plates, Title 2, ch. 89, part 3.

Confidential license plates and registrations, Title 44, ch. 4, part 2.

61-3-401. Definition of personalized license plates. Personalized license plates, as used in 61-3-401 through 61-3-406, mean license plates that have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a combination of letters or numbers, or both, requested by the owner of the vehicle.

History: En. 53-150 by Sec. 3, Ch. 257, L. 1973; R.C.M. 1947, 53-150.

61-3-402. Personalized license plates authorized. Any person who is the registered owner of a motor vehicle, a truck, motor home, camping trailer, motorcycle, quadricycle, or other vehicle for the owner's personal use registered with the department or who makes application for original registration of a motor vehicle may upon payment of the fee prescribed in 61-3-406 apply to the department for personalized license plates in the manner prescribed in 61-3-405, which plates shall be affixed to the motor vehicle for which registration is sought in lieu of the regular license plates provided for in this chapter.

History: En. 53-148 by Sec. 1, Ch. 257, L. 1973; amd. Sec. 1, Ch. 53, L. 1975; R.C.M. 1947, 53-148; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 20, Ch. 516, L. 1985.

Cross-References

"Motor vehicle" defined, 61-1-102.

"Motorcycle" defined, 61-1-105.

"Truck" defined, 61-1-107.

"Camper" defined, 61-1-129.

"Motor home" defined, 61-1-130.

"Quadricycle" defined, 61-1-133.

61-3-403. Color and design of personalized license plates — exception — county designation. (1) Except as provided in 61-3-466, the personalized license plates must be the same color and design as regular passenger motor vehicle license plates and must consist of numbers or letters, or any combination thereof, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that

do not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department.

History: En. 53-149 by Sec. 2, Ch. 257, L. 1973; R.C.M. 1947, 53-149; amd. Sec. 1, Ch. 318, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 516, L. 1985; amd. Sec. 8, Ch. 661, L. 1989.

Cross-References

Collegiate license plates, 61-3-463.

61-3-404. Personalized license plates restricted to registered owner. Personalized license plates shall be issued only to the registered owner of the vehicle upon which they are displayed.

History: En. 53-151 by Sec. 4, Ch. 257, L. 1973; R.C.M. 1947, 53-151.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

61-3-405. Application for personalized plates. An applicant for personalized license plates or renewal of such plates in subsequent years pursuant to 61-3-401 through 61-3-406 shall file an application therefor in the form and by the date the department requires, indicating thereon the combination of letters or numbers, or both, requested as a registration number. There shall be no duplication of registration numbers, and the department may refuse to issue any combination of letters or numbers, or both, that may carry connotations offensive to good taste and decency or which are misleading or a duplication of license plates provided for elsewhere in this title.

History: En. 53-152 by Sec. 5, Ch. 257, L. 1973; R.C.M. 1947, 53-152; amd. Sec. 36, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Personalized collegiate license plates, 61-3-466.

61-3-406. Fees for personalized plates — disposition. (1) In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of $25 for the original personalized license plate and a fee of $10 for each transfer or renewal thereof.

(2) The revenue derived from the fee as provided herein must be deposited as follows:

(a) $5 of the application fee and $5 of the transfer or renewal fee in the county general fund; and

(b) $20 of the application fee and $5 of the transfer or renewal fee in the state general fund.

History: En. 53-153 by Sec. 6, Ch. 257, L. 1973; R.C.M. 1947, 53-153; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 141, L. 1989; amd. Sec. 11, Ch. 398, L. 1989.

Cross-References

Fund structure, 17-2-102.

Department of Justice — disposition of fees, 61-3-108.

Personalized collegiate license plates, 61-3-466.

61-3-407 through 61-3-410 reserved.

61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item. (1) An owner of a motor vehicle more than 30 years old, used solely as a collector's item and not for general transportation purposes, may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom purchased;

(c) the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number of the motor vehicle; and

(d) that the vehicle is owned and operated solely as a collector's item and not for general transportation purposes.

(2) The registration fee for a motor vehicle registered under subsection (1) is:

(a) for a vehicle weighing 2,850 pounds or less, $5; and

(b) for a vehicle weighing more than 2,850 pounds, $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the department shall file the application and register the motor vehicle therein described in the manner specified in 61-3-101 and, unless the applicant chooses to exercise the option allowed in 61-3-412, shall deliver to the applicant:

(a) for a motor vehicle manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for a motor vehicle manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance may not be shown on the plates.

(5) Annual renewal of the registration of a motor vehicle registered under this section is not required, and the registration is valid as long as the vehicle is in existence; provided, however, that upon sale of the motor vehicle, the purchaser shall renew the registration and pay the license fees provided in subsection (2).

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963; amd. Sec. 1, Ch. 422, L. 1973; R.C.M. 1947, 53-106.1; amd. Sec. 37, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 150, L. 1989.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

Vehicles subject to staggered registration, 61-3-313.

61-3-412. Display of original Montana license plates on collector's item vehicle — definition — validation. (1) As used in this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 to display original Montana license plates, with validation as required in subsection (3), after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrol officer of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a $5 fee, receipt of the highway patrolman's certification that he has determined the license plate is legible and meets the requirements of subsection (1); and

(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in 61-3-101; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(3)(a); or

(B) "V" to designate vehicles described in 61-3-411(3)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if no windshield exists, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under this section a one-time special collector's item motor vehicle license fee of $20.

History: En. Sec. 2, Ch. 150, L. 1989; amd. Sec. 1, Ch. 217, L. 1989.

61-3-413 through 61-3-420 reserved.

61-3-421. Amateur radio operators — special license plate. A motor vehicle owner and resident of this state who holds an unrevoked and unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, upon written application on a form prescribed by the department, accompanied by proof of ownership of the amateur radio station license and operator's license, must be issued lettered license plates in pairs (two identically lettered plates), in lieu of the regular license plates prescribed by law. There must be stamped or impressed upon the special license plates in clear lettering the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission, and the plates so lettered must be renewed as provided in 61-3-312.

History: En. Sec. 1, Ch. 2, L. 1957; amd. Sec. 1, Ch. 62, L. 1959; R.C.M. 1947, 53-106.2; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 635, L. 1989.

Cross-References

Vehicles subject to staggered registration, 61-3-313.

61-3-422. Issuance — application — additional fee. The department shall issue lettered license plates as provided in 61-3-421 to amateur radio operators upon:

(1) application showing proof that the applicant is the owner and holder of an amateur radio station license and operator's license;

(2) compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles;

(3) payment, or proof of payment, of all other fees and taxes applicable to regular motor vehicle license plates; and

(4) payment of a $5 additional fee.

History: En. Sec. 2, Ch. 2, L. 1957; amd. Sec. 2, Ch. 62, L. 1959; R.C.M. 1947, 53-106.3; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 635, L. 1989.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

61-3-423. Rules — limit of one identical pair of plates for each operator. The department shall make such rules as may be necessary to procure compliance with all the laws of the state regulating the issuance of motor vehicle licenses relating to the use and operation of motor vehicles before issuing the lettered license plates. The department shall not issue more than one identical pair of lettered license plates for any licensed amateur radio station in any one licensing period.

History: En. Sec. 3, Ch. 2, L. 1957; amd. Sec. 3, Ch. 62, L. 1959; R.C.M. 1947, 53-106.4; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-3-424. List of radio operators' special plates — distribution to public officials. The department shall, on or before July 1 of each year, furnish to the chief of the state highway patrol, to the director of civil defense, to the sheriff of each county in the state, to the chief of police of each incorporated city in the state, and to other public officials as the department shall deem necessary, an alphabetically arranged list of the names, addresses, and license plate numbers and letters of each person to whom a special license plate has been issued, and it shall be the duty of the department, sheriffs, and chiefs of police to maintain and keep current such lists for public information and inquiry, particularly in relation to public emergencies.

History: En. Sec. 4, Ch. 2, L. 1957; R.C.M. 1947, 53-106.5; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Sheriff, 7-32-2121.

Duties of Chief of Police, 7-32-4105.

Highway Patrol — general duties of Department of Justice, 44-1-102.

Duties of Department of Justice — records, 61-3-101.

61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license. The lettered license plates, as herein provided, are in lieu of the regular license plates on the motor vehicle owned by the amateur radio licensee for the period of time that the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. If the official amateur radio license is revoked or expires for any reason, the license plate must be removed immediately by the owner of the motor vehicle, and it is the responsibility of the owner to then obtain regular license plates. If the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's licenses has the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the department. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued must be returned and surrendered to the department.

History: En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969; R.C.M. 1947, 53-106.6; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 3, Ch. 635, L. 1989.

Cross-References

Transfer of license plates to another motor vehicle, 61-3-335.

61-3-426 through 61-3-430 reserved.

61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in 61-3-502, 61-4-301 through 61-4-308, or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment shall display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of his own farming operations are exempt from this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967; amd. Sec. 1, Ch. 244, L. 1971; Sec. 32-3707, R.C.M. 1947; amd. and redes. 53-639.1 by Sec. 124, Ch. 316, L. 1974; amd. Sec. 3, Ch. 388, L. 1975; R.C.M. 1947, 53-639.1; amd. Sec. 1, Ch. 74, L. 1979; amd. Sec. 1, Ch. 39, L. 1981; amd. Sec. 14, Ch. 140, L. 1985.

Cross-References

When property is assessed, Title 15, ch. 8, part 2.

"Implement of husbandry" defined, 61-1-121.

61-3-432. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, are not subject to this chapter, 61-4-101 through 61-4-106, chapter 6, part 2 of chapter 10, or part 4 of chapter 12.

History: En. Sec. 3, Ch. 150, L. 1963; Sec. 53-638.1, R.C.M. 1947; amd. and redes. 53-639.2 by Sec. 187, Ch. 316, L. 1974; R.C.M. 1947, 53-639.2; amd. Sec. 2, Ch. 39, L. 1981.

61-3-433. Issuance of identification plate and receipt — contents. The county treasurer shall issue to an applicant for an equipment identification plate a single metal plate with a distinguishing number and a receipt for the fee collected, which receipt shall contain the name and address of the applicant, the number of the plate issued, the serial number of the equipment, and a brief description of that equipment.

History: En. Sec. 2, Ch. 183, L. 1955; amd. Sec. 188, Ch. 316, L. 1974; R.C.M. 1947, 53-640.

Cross-References

Duties of County Treasurer, 7-6-2111.

61-3-434. Attaching receipt to equipment — inspection. The receipt shall be carried in a suitable container attached to the equipment or immediately available for inspection of any peace officer or highway patrol officer.

History: En. Sec. 3, Ch. 183, L. 1955; R.C.M. 1947, 53-641; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Law enforcement, Title 7, ch. 32.

Jurisdiction of Highway Patrol, Title 44, ch. 1, part 10.

61-3-435 through 61-3-440 reserved.

61-3-441. Renumbered 61-3-524 by Code Commissioner, 1979.

61-3-442. Renumbered 61-3-525 by Code Commissioner, 1979.

61-3-443. Repealed. Sec. 6, Ch. 159, L. 1985.

History: En. Sec. 1, Ch. 441, L. 1983.

61-3-444. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 2, Ch. 441, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

Compiler's Comments

Coordination Instruction: Section 5, Ch. 500, L. 1991, a coordination section, provided: "If Senate Bill No. 191, including amendments incorporating into 61-3-332 provisions allowing a disabled veteran the option of receiving a handicapped license plate or, if qualified, an ex-prisoner of war license plate, is passed and approved:

(1) [sections 1 and 2 of this act] [61-3-444 and 61-3-451] are void; and

(2) in 61-3-455, the code commissioner shall change "61-3-451" to "61-3-332"." Senate Bill No. 191 was approved May 3, 1991, as Ch. 724, L. 1991, and included amendments to 61-3-332 that satisfied the conditions of the coordination instruction; therefore, subject to subsection (1) of the coordination instruction,

amendments to this section contained in Ch. 500, L. 1991, are void.

61-3-445. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 3, Ch. 441, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

61-3-446. Retention of special license plates. If during a registration year the holder of special license plates issued under 61-3-332(10)(b) through (10)(f) disposes of the vehicle to which the plates are affixed, he shall retain the plates and may affix them to another vehicle.

History: En. Sec. 4, Ch. 441, L. 1983; amd. Sec. 5, Ch. 159, L. 1985; amd. Sec. 2, Ch. 494, L. 1985; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Substituted "61-3-332(10)(b) through (10)(f)" for "61-3-444, 61-3-445, 61-3-447, or 61-3-451".

Coordination Instruction: The amendment to this section in sec. 2, Ch. 31, L. 1991, was voided by sec. 15, Ch. 724, L. 1991, a coordination instruction.

Cross-References

Transfer of license plates to another motor vehicle, 61-3-335.

61-3-447. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 1, Ch. 494, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-3-448 through 61-3-450 reserved.

61-3-451. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 1, Ch. 215, L. 1971; amd. Sec. 1, Ch. 33, L. 1975; amd. Sec. 1, Ch. 67, L. 1977; R.C.M. 1947, 53-106.8; amd. Sec. 7, Ch. 614, L. 1981; amd. Sec. 5, Ch. 614, L. 1983; amd. Sec. 1, Ch. 159, L. 1985; Sec. 10-2-301, MCA 1983; redes. 61-3-451 by Code Commissioner, 1985.

Compiler's Comments

Coordination Instruction: Section 5, Ch. 500, L. 1991, a coordination section, provided: "If Senate Bill No. 191, including amendments incorporating into 61-3-332 provisions allowing a disabled veteran the option of receiving a handicapped license plate or, if qualified, an ex-prisoner of war license plate, is passed and approved:

(1) [sections 1 and 2 of this act] [61-3-444 and 61-3-451] are void; and

(2) in 61-3-455, the code commissioner shall change "61-3-451" to "61-3-332"." Senate Bill No. 191 was approved May 3, 1991, as Ch. 724, L. 1991, and included amendments to 61-3-332 that satisfied the conditions of the coordination instruction; therefore, subject to subsection (1) of the coordination instruction, amendments to this section contained in Ch. 500, L. 1991, are void.

61-3-452. Disabled veterans' plates nontransferable. The special license plates for disabled veterans issued pursuant to 61-3-332(10)(c) are not transferable.

History: En. Sec. 2, Ch. 215, L. 1971; R.C.M. 1947, 53-106.9; amd. Sec. 2, Ch. 159, L. 1985; Sec. 10-2-302, MCA 1983; redes. 61-3-452 by Code Commissioner, 1985; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Substituted "61-3-332(10)(c)" for "61-3-451".

61-3-453. Disabled veterans' plates limited to one automobile or truck — personalized plates. (1) A disabled veteran is not entitled to special license plates for disabled veterans under 61-3-332(10)(c) for more than one passenger automobile or one truck up to and including 1 ton GVW-rated capacity.

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates.

History: En. Sec. 3, Ch. 215, L. 1971; amd. Sec. 1, Ch. 49, L. 1977; amd. Sec. 2, Ch. 67, L. 1977; R.C.M. 1947, 53-106.10; amd. Sec. 8, Ch. 614, L. 1981; amd. Sec. 3, Ch. 159, L. 1985; Sec. 10-2-303, MCA 1983; redes. 61-3-453 by Code Commissioner, 1985; amd. Sec. 3, Ch. 500, L. 1991; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 500 in (1), near end, substituted reference to 1 ton GVW-rated capacity for reference to three-quarter ton GVW-rated capacity; inserted (2) providing for personalized disabled veteran license plates; and made minor changes in style. Amendment effective April 20, 1991.

Chapter 724 in (1) substituted "61-3-332(10)(c)" for "61-3-451".

61-3-454. Special parking privilege. A vehicle lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under 49-4-302.

History: En. Sec. 1, Ch. 71, L. 1985; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Substituted "61-3-332(10)(c)" for "61-3-451".

61-3-455. Violation a misdemeanor. A person who violates 61-3-452 or 61-3-453 or who knowingly and wrongfully attempts to secure license plates under 61-3-332 shall be guilty of a misdemeanor and punished by a fine of not less than $100 or imprisonment for not more than 30 days, or both.

History: En. Sec. 4, Ch. 215, L. 1971; R.C.M. 1947, 53-106.11; Sec. 10-2-304, MCA 1983; redes. 61-3-455 by Code Commissioner, 1985; amd. Secs. 4, 5, Ch. 500, L. 1991; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 500 near middle, after "secure", deleted "free" and substituted "61-3-332" for "61-3-451", pursuant to coordination instruction contained in sec. 5, Ch. 500; and made minor change in style. Amendment effective April 20, 1991.

Chapter 724 substituted "61-3-332(10)(c)" for "61-3-451". The Code Commissioner has codified the broader reference provided for in Ch. 500.

Coordination Instruction — Code Commissioner Instruction: Section 5, Ch. 500, L. 1991, a coordination section, provided: "If Senate Bill No. 191, including amendments incorporating into 61-3-332 provisions allowing a disabled veteran the option of receiving a handicapped license plate or, if qualified, an ex-prisoner of war license plate, is passed and approved:

(1) [sections 1 and 2 of this act] [61-3-444 and 61-3-451] are void; and

(2) in 61-3-455, the code commissioner shall change "61-3-451" to "61-3-332"." Senate Bill No. 191 was approved May 3, 1991, as Ch. 724, L. 1991, and included amendments to 61-3-332 that satisfied the conditions of the coordination instruction; therefore, subject to subsection (2) of the coordination instruction, the reference near the middle of this section to 61-3-451 was changed by the Code Commissioner to 61-3-332.

61-3-456 through 61-3-460 reserved.

61-3-461. Short title. Sections 61-3-461 through 61-3-467 may be cited as the "Montana Collegiate License Plates Act".

History: En. Sec. 1, Ch. 661, L. 1989.

61-3-462. Definitions. As used in 61-3-461 through 61-3-467, the following definitions apply:

(1) "Collegiate license plates" means license plates bearing the colors, numerals, letters, and insignia provided in 61-3-463 and issued as provided in 61-3-464 through 61-3-466.

(2) "Institution" means:

(a) a unit of the Montana university system as designated in 20-25-201;

(b) a community college district as defined in 20-15-101; or

(c) a college or university located in Montana and accredited by a national or regional accrediting association for institutions of higher learning to grant baccalaureate degrees.

History: En. Sec. 2, Ch. 661, L. 1989.

61-3-463. Collegiate license plates. (1) Subject to the provisions of 61-3-332(3) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in 61-3-464 through 61-3-466.

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (1), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a nonremovable sticker denoting the correct county designation under 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) No issue of collegiate license plates may be ordered and manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid.

History: En. Sec. 3, Ch. 661, L. 1989.

61-3-464. Application for collegiate license plates. An applicant for collegiate license plates or renewal of collegiate license plates pursuant to 61-3-465 shall apply in the form and by the date the department requires.

History: En. Sec. 4, Ch. 661, L. 1989.

61-3-465. Issuance — application — additional fee — disposition. (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month the county treasurer shall transfer to the state treasurer the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month the state treasurer shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the state treasurer by the county treasurers during the preceding month.

History: En. Sec. 5, Ch. 661, L. 1989; amd. Sec. 10, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a) deleted reference to 61-3-304.

61-3-466. Personalized collegiate license plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for collegiate license plates may be combined with an application for personalized plates.

(2) An application for personalized collegiate license plates must be made on a form supplied by the department.

(3) Personalized collegiate license plates must bear the distinctive color and insignia as provided in 61-3-463.

History: En. Sec. 6, Ch. 661, L. 1989.

61-3-467. Authorization to receive and transmit donations. As provided in 61-3-465 and notwithstanding any other provisions of Title 7, Title 17, or this title:

(1) the county treasurer shall receive the annual scholarship donations provided for in 61-3-465 and once each month transmit those donations to the state treasurer; and

(2) the state treasurer shall accept the annual scholarship donations and once each month distribute the accumulated proceeds to the beneficiary institutions specified by and according to the totals contained in the county treasurers' reports.

History: En. Sec. 7, Ch. 661, L. 1989.

Part 5

Taxes and Fees

Part Cross-References
Taxation, Title 15.
Custom combiner's fee, 61-10-130.

61-3-501. When vehicle taxes and fees are due. (1) Property taxes, new car taxes, and fees must be paid on the date of registration or reregistration of the vehicle.

(2) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, property taxes abate on such vehicle properly reported with the department of revenue until the vehicle is sold and thereafter the purchaser shall pay the pro rata balance of the taxes due and owing on the vehicle.

(3) In the event a vehicle's registration period is changed under 61-3-315, all taxes and other fees due thereon shall be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle shall be registered. Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and shall pay all taxes and fees due thereon for a 12-month period.

History: (1), (2)En. 53-159 by Sec. 6, Ch. 74, L. 1975; Sec. 53-159, R.C.M. 1947; (3)En. 53-161 by Sec. 8, Ch. 74, L. 1975; amd. Sec. 2, Ch. 183, L. 1977; Sec. 53-161, R.C.M. 1947; R.C.M. 1947, 53-159, 53-161; amd. Sec. 12, Ch. 712, L. 1979; amd. Sec. 29, Ch. 614, L. 1981; amd. Sec. 22, Ch. 516, L. 1985; amd. Sec. 24, Ch. 611, L. 1987.

Cross-References
Motor vehicle assessment, 15-8-202.
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.
Registration period, 61-3-314.
Motor vehicle dealers, Title 61, ch. 4, part 1.

61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

History: (1) thru (5)En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967; amd. Sec. 119, Ch. 316, L. 1974; amd. Sec. 15, Ch. 74, L. 1975; Sec. 32-3315, R.C.M. 1947; (6)En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963;

amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; (7)En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; Sec. 32-3319, R.C.M. 1947; R.C.M. 1947, 32-3315(part), 32-3319(part), 53-114(6); amd. Sec. 38, Ch. 421, L. 1979; amd. Sec. 13, Ch. 712, L. 1979; amd. Sec. 30, Ch. 614, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 657, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 585, L. 1987; amd. Sec. 25, Ch. 611, L. 1987; amd. Sec. 3, Ch. 517, L. 1989.

Cross-References

Duties of County Treasurer, 7-6-2111.

Motor vehicle assessment, 15-8-202.

Fund structure, 17-2-102.

Schools — traffic education, Title 20, ch. 7, part 5.

Fleet registration period, 61-3-318.

Special mobile equipment — exemption from registration and fees, 61-3-431.

Penalty for nonpayment of sales tax, 61-3-605.

Foreign vehicles used for transportation in connection with employment, 61-3-707.

Motor vehicle dealers, Title 61, ch. 4, part 1.

Licensing of new motor vehicle manufacturers, distributors, and importers, Title 61, ch. 4, part 2.

Size and weight — enforcement, 61-10-231.

Offenses for which arrest authorized, 61-12-206.

Carriers of passengers, Title 69, ch. 11, part 2.

61-3-503. *(Temporary)* **Assessment.** (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle shall occur on the anniversary date of the registration and shall continue until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles must be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1). *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

61-3-503. *(Effective January 1, 1994)* **Assessment.** (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 must be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines; and a lien for taxes and fees due on the vehicle shall occur on the anniversary date of the registration and shall continue until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles shall be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide or another nationally published used vehicle or appraisal guide approved by the department of revenue, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide or other approved guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides or other approved guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide or other approved guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1).

History: Ap. p. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; Sec. 53-114, R.C.M. 1947; Ap. p. Sec. 9, Ch. 74, L. 1975; Sec. 53-162, R.C.M. 1947; R.C.M. 1947, 53-114(2), (5), 53-162; amd. Sec. 39, Ch. 421, L. 1979; amd. Sec. 14, Ch. 712, L. 1979; amd. Sec. 2, Ch. 262, L. 1981; amd. Sec. 31, Ch. 614, L. 1981; amd. Sec. 23, Ch. 516, L. 1985; amd. Sec. 26, Ch. 611, L. 1987; amd. Sec. 1, Ch. 349, L. 1989; amd. Sec. 5, Ch. 525, L. 1989; amd. Sec. 1, Ch. 8, Sp. L. June 1989; amd. Sec. 7, Ch. 604, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(c) and (1)(d)(ii), after second "Guide", inserted "or another nationally published used vehicle or appraisal guide approved by the department of revenue"; in (1)(e), (1)(e)(ii), and (1)(g), after reference to N.A.D.A. guide, inserted reference to other approved guides; and made minor changes in style. Amendment effective July 1, 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Duties of County Treasurer, 7-6-2111.

County Assessor as agent of Department of Revenue, 15-8-102.

Motor vehicle assessment, 15-8-202.

Liens — general provisions, Title 71, ch. 3, part 1.

61-3-504. Computation of tax. (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a rated capacity of 1 ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c), and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

(3) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

(4) For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided therefor.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(4); amd. Sec. 15, Ch. 712, L. 1979; amd. Sec. 32, Ch. 614, L. 1981; amd. Sec. 24, Ch. 516, L. 1985; amd. Sec. 27, Ch. 611, L. 1987; amd. Sec. 4, Ch. 517, L. 1989; amd. Sec. 3, Ch. 612, L. 1989; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: In (2) substituted "61-3-332(10)(c)" for "61-3-451".

Cross-References

Duties of County Treasurer related to taxation, 7-6-2503.

Fleet registration period, 61-3-318.

61-3-505. Repealed. Sec. 16, Ch. 724, L. 1991.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(7), (8); amd. Sec. 40, Ch. 421, L. 1979.

61-3-506. *(Temporary)* **Rules.** The department of revenue shall adopt rules for the payment of property taxes and the department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520, but shall specifically provide that new car taxes shall be for a 12-month period. *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

61-3-506. *(Effective January 1, 1994)* **Rules.** The department of revenue shall adopt rules for the payment of property taxes and the department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316 and 61-3-501. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316 and 61-3-501, but shall specifically provide that new car taxes shall be for a 12-month period.

History: En. 53-160 by Sec. 7, Ch. 74, L. 1975; R.C.M. 1947, 53-160; amd. Sec. 2, Ch. 657, L. 1983; amd. Sec. 28, Ch. 611, L. 1987; amd. Sec. 6, Ch. 525, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-3-507. *(Temporary)* **Exemption.** (1) A motor vehicle subject to anniversary date registration as provided in 61-3-313 through 61-3-316 is exempt from the provisions of 61-3-503(1)(b).

(2) A vehicle exempt from taxation under 15-6-215 or subject to the provisions of 61-3-520 is exempt from all other taxes and fees generally imposed on a vehicle by this part. *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

61-3-507. *(Effective January 1, 1994)* **Exemption.** Motor vehicles subject to anniversary date registration as provided in 61-3-313 through 61-3-316 are exempt from the provisions of 61-3-503(1)(b).

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R.C.M. 1921; amd. Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch.

158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967; amd. Sec. 3, Ch. 214, L. 1971; amd. Sec. 12, Ch. 74, L. 1975; amd. Sec. 1, Ch. 55, L. 1977; amd. Sec. 1, Ch. 521, L. 1977; amd. Sec. 43, Ch. 566, L. 1977; R.C.M. 1947, 53-114(9); amd. Sec. 33, Ch. 614, L. 1981; amd. Sec. 7, Ch. 525, L. 1989; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: (Temporary version) At end of (1) deleted "and 61-3-505".

(Version effective January 1, 1994) At end deleted reference to 61-3-505.

61-3-508. Junk vehicle disposal fee. A special junk vehicle disposal fee shall be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of $1.50 on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee shall be assessed in the amount of 50 cents on each passenger car and truck under 8,001 pounds GVW registered for licensing. The fees shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(1) vehicles leased or owned by the state or by a county or municipality;

(2) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(3) vehicles displaying dealer's or wholesaler's license plates, as provided in 61-4-103, while owned by a dealer or wholesaler; and

(4) housetrailers or equipment which is not self-propelled or which requires towing upon a highway of this state.

History: En. Sec. 7, Ch. 410, L. 1973; amd. Sec. 1, Ch. 52, L. 1975; amd. Sec. 2, Ch. 520, L. 1975; amd. Sec. 18, Ch. 140, L. 1977; amd. Sec. 5, Ch. 252, L. 1977; R.C.M. 1947, 69-6807(2); amd. Sec. 41, Ch. 421, L. 1979; amd. Sec. 12, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment — Code Commissioner Instruction: The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Cross-References

Duties of County Treasurer, 7-6-2111.

Foreign vehicles used for transportation in connection with employment, 61-3-707.

Reuse and restoration of junk vehicle rules, 75-10-503.

Disposal of junk vehicles — fees and records, 75-10-513.

61-3-509. Disposition of taxes. (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the

motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901. Any amount forwarded to the state treasurer under this subsection that is not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected.

History: **En. Subd. 4, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.3, R.C.M. 1935; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965; R.C.M. 1947, 53-117; amd. Sec. 16, Ch. 712, L. 1979; amd. Sec. 34, Ch. 614, L. 1981; amd. Sec. 25, Ch. 516, L. 1985; amd. Sec. 1, Ch. 685, L. 1985; amd. Sec. 1, Ch. 702, L. 1985; amd. Sec. 2, Ch. 1, Sp. L. 1985; amd. Sec. 3, Ch. 416, L. 1987; amd. Sec. 29, Ch. 611, L. 1987; amd. Sec. 46, Ch. 16, L. 1991.**

Compiler's Comments

1991 Amendment: In first sentence of (2) substituted "1 ton" for "three-quarters of a ton".

Cross-References

Duties of County Treasurer related to taxation, 7-6-2503.

Disposition of tax proceeds, Title 15, ch. 1, part 5.

Snowmobiles — registration and decals — use of certain fees, 23-2-616.

61-3-510. Weed control fee. (1) A special weed control fee of $1.50 must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) motor vehicle as defined in 61-1-102;

(b) motorcycle as defined in 61-1-105;

(c) motor-driven cycle as defined in 61-1-106; and

(d) quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, or city;

(b) vehicles exempt from payment of registration fees by 61-3-321(8); and

(c) vehicles or equipment which is not self-propelled or which requires towing when moved upon a highway of this state.

History: **En. Sec. 1, Ch. 639, L. 1987; amd. Sec. 2, Ch. 433, L. 1989; amd. Sec. 11, Ch. 724, L. 1991.**

Compiler's Comments

1991 Amendment: In (3)(b) changed subsection reference to 61-3-321.

61-3-511. County motor vehicle computer fee. (1) A county motor vehicle computer fee of $1 must be assessed on the annual registration or reregistration for each of the following:

(a) motor vehicles subject to registration or reregistration under Title 61, chapter 3;

(b) boats subject to registration or reregistration under Title 23, chapter 2, part 5;

(c) snowmobiles subject to registration or reregistration under Title 23, chapter 2, part 6; and

(d) off-highway vehicles subject to registration or reregistration under Title 23, chapter 2, part 8.

(2) The fee must be collected by the county treasurer and forwarded to the state treasurer for deposit in the state general fund.

History: En. Sec. 15, Ch. 604, L. 1991.

Compiler's Comments

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

61-3-512. State parks recreational vehicle fee — collection and expenditure — exception. (1) There is a fee of $3.50 imposed on the registration or reregistration of each recreational vehicle as defined in 61-1-132, camper as defined in 61-1-129, motor home as defined in 61-1-130, and travel trailer as defined in 61-1-131. The fee is in addition to annual registration fees and is due and payable at the time of registration.

(2) The fee must be collected by the county treasurer and submitted to the department of revenue to be expended as provided in this section. The department of revenue shall place the fee proceeds in the state treasury in the special revenue fund established in 23-1-105 to the credit of the department of fish, wildlife, and parks. The funds may be used to provide recreational vehicle services and facilities in state parks.

(3) The fee imposed by subsection (1) need not be paid by a dealer for vehicles that constitute the inventory of the dealership.

History: En. Sec. 1, Ch. 718, L. 1991.

Compiler's Comments

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, this section is effective January 1, 1992.

61-3-513 through 61-3-517 reserved.

61-3-518. Application for camper certificate of ownership. A person applying for a certificate of ownership of a camper shall furnish proof of ownership in the form of a notarized bill of sale or a conditional sales contract.

History: En. Sec. 6, Ch. 715, L. 1991.

Compiler's Comments

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

61-3-519. Grace period for registration and payment of tax or fee — penalty for failure to pay tax or fee. (1) Unless the tax or fee provided in 61-3-523 and 61-3-524 for the year has been paid, upon the purchase of a new camper, the purchaser has 20 days from the date of purchase to pay the tax or to apply for the camper decal fee, or both, as if the camper were being taxed for the first time in that registration year. The purchaser may operate or transport a camper on the highways of Montana without a tax-paid decal during the 20-day period if the operator of the camper or of the vehicle upon which the camper is transported has in his possession a 20-day certificate issued by a dealer, if the camper was purchased from a dealer, or a vehicle purchase certificate issued pursuant to 61-3-317 or other evidence of purchase of the camper.

(2) A purchaser who fails to make application and pay the tax within the time provided in subsection (1) is subject to a penalty of $10, which must be collected by the county treasurer when the tax is paid and must be in addition to the fees otherwise provided by law.

History: En. Sec. 7, Ch. 715, L. 1991.

Compiler's Comments

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

61-3-520. *(Temporary)* **Taxation of vehicles used exclusively in filming motion pictures or television commercials.** (1) A vehicle used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year must be assessed as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the assessment must be prorated as provided in subsection (2).

(2) The taxes assessed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

(3) Taxes on a vehicle imposed pursuant to this section must be collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally. *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

History: En. Sec. 3, Ch. 525, L. 1989.

Cross-References

Exemption for motion picture and television commercial property, 15-6-215.

Taxation of motion picture and television commercial property, 15-24-305.

61-3-521. Fee in lieu of tax for certain vehicles. (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers. The fee is in addition to annual registration fees.

(2) The provisions of 61-10-208 do not apply to a vehicle that qualifies under subsection (1) above.

(3) The fee imposed by subsection (1) above need not be paid by a dealer for vehicles that constitute inventory of the dealership.

History: En. Sec. 1, Ch. 712, L. 1979; amd. Sec. 1, Ch. 13, L. 1981.

Cross-References

"Camper" defined, 61-1-129.

"Motor home" defined, 61-1-130.

"Travel trailer" defined, 61-1-131.

Motor vehicle dealers, Title 61, ch. 4, part 1.

61-3-522. Schedule of fees for motor homes. (1) The owner of a motor home shall pay a fee based on the age of the motor home according to the following schedule:

less than 2 years old	$250
2 years old and less than 3 years old	230
3 years old and less than 4 years old	195
4 years old and less than 5 years old	150
5 years old and less than 6 years old	125
6 years old and less than 7 years old	100
7 years old and less than 8 years old	75
8 years old and older	65

(2) The age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year.

History: En. Sec. 2, Ch. 712, L. 1979; amd. Sec. 30, Ch. 611, L. 1987.

Cross-References

"Motor home" defined, 61-1-130.

61-3-523. Schedule of fees for travel trailers and campers. (1) The fee imposed by 61-3-521 on a travel trailer less than 3 years old is $60. In all other cases the fee is $22.50.

(2) The fee imposed by 61-3-521 on a camper less than 3 years old is $52.50. In all other cases the fee is $22.50.

(3) The age of a travel trailer or camper is determined by subtracting the manufacturer's designated model year from the current calendar year.

History: En. Sec. 3, Ch. 712, L. 1979; amd. Sec. 31, Ch. 611, L. 1987.

Cross-References

"Camper" defined, 61-1-129.

"Travel trailer" defined, 61-1-131.

61-3-524. Tax-paid decal required on camper — application for decal — application fee — issuance — disposition of fee. (1) A camper, subject to taxation in Montana, may not be operated by a person on the public highways or streets in this state unless there is displayed in a conspicuous place on the camper a decal as visual proof that the tax has been paid on the camper for the current year.

(2) Application for the issuance of the decal must be made to the county treasurer in the county of the owner's residence, accompanied by an application fee of $1, upon a form to be furnished by the department of revenue for this purpose, which may be obtained at the county treasurer's office and which must provide for substantially the following information:

(a) name of owner;
(b) address;
(c) name of manufacturer;
(d) model number;
(e) make;
(f) year of manufacture;
(g) statement evidencing payment of the property tax; and
(h) such other information as the department may require.

(3) (a) The county treasurer shall sign the application and transmit the application to the department of justice.

(b) Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a numbered decal in the style and design prescribed by the department of revenue and of a different color than the preceding year.

History: En. Sec. 2, Ch. 414, L. 1973; R.C.M. 1947, 53-645; amd. Sec. 10, Ch. 712, L. 1979; Sec. 61-3-441, MCA 1979; redes. 61-3-524 by Code Commissioner, 1979; amd. Sec. 32, Ch. 611, L. 1987; amd. Sec. 4, Ch. 715, L. 1991.

Compiler's Comments

1991 Amendment: In (2), before "the county treasurer", deleted "the department of revenue or", after "the county treasurer" inserted "in the county of the owner's residence, accompanied by an application fee of $1", after "furnished" inserted "by the department of revenue", after "obtained" deleted "from the department or", and after "office" deleted "in the county wherein the owner resides"; in (3)(a), after "department", inserted "of justice" and deleted "accompanied by an application fee"; in (3)(b), before "county treasurer", deleted "department or", before "decal" inserted "numbered", after "department" inserted "of revenue", and at end deleted "numbered numerically"; and made minor changes in style.

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

Cross-References

Duties of County Treasurer, 7-6-2111.

Administration of revenue laws, 15-1-201.

"Camper" defined, 61-1-129.

Penalty for violation of camper decal requirement, 61-3-606.

61-3-525. Annual application for decals. Application may be made to the county treasurer for the issuance of camper decals annually when the motor vehicle to which the camper is customarily attached is registered. If the vehicle to which the camper is customarily attached may be reregistered by mail, application for the camper decals may also be made by mail in the manner provided in 61-3-535.

History: En. Sec. 4, Ch. 414, L. 1973; amd. Sec. 1, Ch. 211, L. 1977; R.C.M. 1947, 53-647; amd. Sec. 11, Ch. 712, L. 1979; Sec. 61-3-442, MCA 1979; redes. 61-3-525 by Code Commissioner, 1979; amd. Sec. 1, Ch. 450, L. 1991; amd. Sec. 5, Ch. 715, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 450 near beginning of first sentence, before "county treasurer", deleted "department of revenue or" and inserted second sentence concerning application by mail for camper decals.

Chapter 715 before "county treasurer" deleted "department of revenue or".

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

Cross-References

Duties of County Treasurer, 7-6-2111.

Administration of revenue laws, 15-1-201.

"Camper" defined, 61-1-129.

Reregistration on anniversary date — Department of Justice to make rules, 61-3-315.

61-3-526. Registration of motor homes and travel trailers — reregistration by mail allowed. (1) All registrations of motor homes and travel trailers expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. Reregistration may be made by mail in the manner provided in 61-3-535. If the ownership of a motor home or travel trailer is transferred during the registration year, it must be reregistered and relicensed as provided by statute.

(2) The owner of a motor home or travel trailer registered under the provisions of this section is entitled to operate such vehicle between May 1

and June 15 without displaying the registration certificate of the current registration year if the owner, during that period, displays upon the motor home or travel trailer the number plates, plate, or decal assigned thereto for the previous registration year.

History: En. Sec. 1, Ch. 146, L. 1989; amd. Sec. 2, Ch. 450, L. 1991.

Compiler's Comments

1991 Amendment: Inserted third sentence concerning reregistration by mail.

61-3-527 through 61-3-530 reserved.

61-3-531 through 61-3-534. Repealed. Sec. 38, Ch. 611, L. 1987.

Compiler's Comments

Histories of Repealed Sections:

61-3-531. En. Sec. 1, Ch. 614, L. 1981.

61-3-532. En. Sec. 2, Ch. 614, L. 1981.

61-3-533. En. Sec. 3, Ch. 614, L. 1981; amd. Sec. 1, Ch. 115, L. 1983; amd. Sec. 2, Ch. 685, L. 1985; amd. Sec. 2, Ch. 702, L. 1985; amd. Secs. 1, 2, Ch. 1, Sp. L. 1985.

61-3-534. En. Sec. 4, Ch. 614, L. 1981.

61-3-535. Vehicle reregistration by mail — renewal cards and reregistration notice by mail. (1) Except as provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:

(a) light vehicles, motorcycles, quadricycles, and other vehicles subject to tax under 61-3-504(2); and

(b) travel trailers, campers, and motor homes subject to a fee in lieu of tax under 61-3-521.

(2) The option to reregister by mail need only be made available for vehicles, motor homes, and travel trailers registered at the close of the expiring registration period in the name of the applicant for reregistration and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department.

(3) The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

(4) In the case of light vehicles, the form to be returned to the county treasurer by the applicant, with the appropriate tax and fees, is to contain a statement that the applicant is in compliance with the financial liability requirements of 61-6-301.

(5) The procedure implemented by the department to permit reregistration or camper decal application by mail shall provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister his vehicle with the county treasurer or to apply for the annual camper decal.

(6) The department shall adopt rules to implement the mail reregistration and decal application procedure.

History: En. Sec. 5, Ch. 614, L. 1981; amd. Sec. 1, Ch. 32, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 1, Ch. 420, L. 1987; amd. Sec. 33, Ch. 611, L. 1987; amd. Sec. 3, Ch. 450, L. 1991; amd. Sec. 8, Ch. 604, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 450 in (1), near middle of first sentence after "61-3-504(2)", inserted language concerning reregistration of motor homes and travel trailers and camper decal applications (language not codified because of rearrangement of section by Ch. 604; the substance of the language is contained in subsection (1)(b) inserted by Ch. 604); in (2), after "vehicles", inserted "motor homes, and travel trailers"; at beginning of (4) inserted "In the case of light vehicles"; in (5), near middle after "reregistration" and at end, inserted language concerning camper decal application; in (6) inserted language concerning decal application; and made minor change in style.

Chapter 604 at beginning of (1) substituted exception clause for "The department shall permit the reregistration of"; in (1)(a), after "light vehicles", inserted "motorcycles, quadricycles" and after "61-3-504(2)" deleted "with the county treasurer by mail at the option of the owner of the vehicle"; inserted (1)(b) regarding reregistration of travel trailers, campers, and motor homes; in (2), at end after "reregistration", inserted "and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department"; inserted (3) requiring development of a mail reregistration procedure; in (5), near middle before "vehicle owner", deleted "light"; and made minor changes in style. Amendment effective July 1, 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of County Treasurer, 7-6-2111.

61-3-536. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 6, Ch. 614, L. 1981; amd. Sec. 2, Ch. 115, L. 1983; amd. Sec. 10, Ch. 708, L. 1983; amd. Sec. 3, Ch. 702, L. 1985; amd. Sec. 2, Ch. 1, Sp. L. 1985; amd. Sec. 7, Ch. 30, Sp. L. June 1986.

61-3-537. *(Temporary)* **Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504(2).

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504(2). The local vehicle tax is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose a local vehicle tax for a fiscal year by adopting a resolution before July 1 of the fiscal year, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax. *(Terminates June 30, 1993—sec. 4, Ch. 749, L. 1991.)*

61-3-537. *(Effective July 1, 1993)* **Local option vehicle tax.** (1) A county may impose a local vehicle tax on vehicles subject to a property tax under 61-3-504(2) at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504(2).

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504(2) and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose a local vehicle tax for a fiscal year by adopting a resolution before July 1 of the fiscal year, after conducting a public hearing on the proposed resolution.

History: En. Sec. 36, Ch. 611, L. 1987; amd. Sec. 2, Ch. 749, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at beginning of second sentence, inserted "The local vehicle tax" and after "is distributed" deleted "in the same manner, based on the registration address of the owner of the motor vehicle"; inserted (2)(a) and (2)(b) providing the percentages of distribution of the local vehicle tax; in (3) inserted second sentence allowing the resolution to provide for distribution of the tax; and made minor changes in style. Amendment effective July 1, 1991, and terminates June 30, 1993.

Effective Date — Applicability: Section 3, Ch. 749, L. 1991, provided: "[This act] is effective July 1, 1991; and applies to district court expenditures made after June 30, 1991."

Termination: Section 4, Ch. 749, L. 1991, provided: "[This act] terminates June 30, 1993."

61-3-538 through 61-3-540 reserved.

61-3-541. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 2, Ch. 516, L. 1985.

61-3-542. Repealed. Sec. 38, Ch. 611, L. 1987.

History: En. Sec. 3, Ch. 516, L. 1985.

Part 6

Penalties — Enforcement

61-3-601. Penalty for violations. Except as otherwise provided, a violation of any of the provisions of this chapter is a misdemeanor and is punishable by a fine not exceeding $500. Nothing in this section prevents the prosecution of a person for an offense committed under any other law.

History: En. Sec. 2, Ch. 158, L. 1931; re-en. Sec. 1755.1, R.C.M. 1935; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965; R.C.M. 1947, 53-102(part); amd. Sec. 42, Ch. 421, L. 1979; amd. Sec. 12, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: Increased maximum fine from $25 to $500; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Registration — license plate required — display, 61-3-301.

61-3-602. Enforcement. It is mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities, and villages to carry out the provisions of this chapter and 61-4-101 through 61-4-105.

History: En. Sec. 2, Ch. 158, L. 1931; re-en. Sec. 1755.1, R.C.M. 1935; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965; R.C.M. 1947, 53-102(part); amd. Sec. 43, Ch. 421, L. 1979.

Cross-References

Local government — law enforcement, Title 7, ch. 32.

State — law enforcement, Title 44.

61-3-603. Penalty for alteration or forgery of certificate of ownership or assignment thereof. Any person who alters or forges or causes to be altered or forged any motor vehicle certificate of ownership or any assignment thereof or who holds or uses any such certificate or assignment knowing it to have been altered or forged is guilty of a felony and upon conviction thereof is subject to a fine of not more than $5,000 or to imprisonment in any penal institution within the state for a period of not more than 10 years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; re-en. Sec. 1763.4, R.C.M. 1935; amd. Sec. 1, Ch. 334, L. 1969; R.C.M. 1947, 53-136; amd. Sec. 44, Ch. 421, L. 1979.

Cross-References

Classification of offenses, 45-1-201.

"Felony" defined, 45-2-101.

Certificates of ownership, Title 61, ch. 3, part 2.

61-3-604. Penalty for altering identification number. (1) A person who willfully removes or falsifies an identification number of a motor vehicle or motor vehicle engine is punishable by a fine of not more than $5,000 or imprisonment in the state prison for a period of not more than 10 years, or both.

(2) Any person or persons, firm, or corporation that sells or offers for sale in this state a vehicle the original vehicle identification number of which has been destroyed, removed, altered, covered, or defaced, with the exception of vehicles bearing a state-assigned identification number in accordance with 61-3-107, is punishable by a fine of not less than $200 or more than $500 and by imprisonment in the county jail for a term of not less than 30 days or more than 180 days. Upon a second or subsequent conviction under this subsection, the punishment shall be imprisonment in the state prison for a term of not less than 1 year or more than 5 years or a fine in an amount not to exceed $50,000, or both.

History: (1)En. Sec. 1, Ch. 256, L. 1969; Sec. 53-139.1, R.C.M. 1947; (2)En. Sec. 15, Ch. 113, L. 1925; re-en. Sec. 1763.7, R.C.M. 1935; amd. Sec. 31, Ch. 121, L. 1965; Sec. 53-139, R.C.M 1947; R.C.M. 1947, 53-139(part), 53-139.1; amd. Sec. 45, Ch. 421, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 272, L. 1991; amd. Sec. 13, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 272 at end of (1), after "is", substituted final clause relating to fine amount and imprisonment term for "guilty of a misdemeanor"; and in (2), in first sentence after "electrically propelled vehicles", inserted "and vehicles bearing a state-assigned identification number in accordance with 61-3-107" and after "is" substituted "punishable" for "guilty of a misdemeanor and upon conviction thereof shall be punished" and at end of last sentence, after "both", deleted "such fine and imprisonment".

Chapter 724 in (2), near middle of first sentence after "defaced", deleted "with the exception of electrically propelled vehicles" (The Code Commissioner has retained the language "with the exception of" to reflect the inclusion of electrically propelled vehicles and the exclusion of vehicles bearing a state vehicle identification number.); and made minor change in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Obscuring identity of machine, 45-6-326.

Misdemeanor — no penalty specified, 46-18-212.

Sales and distribution of motor vehicles, Title 61, ch. 4.

61-3-605. Penalty for nonpayment of sales tax. Any owner or operator of a motor vehicle who violates any provision of 61-3-502 is guilty of a misdemeanor and shall be punished by a fine of not more than $300, or by a sentence of not more than 60 days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965; R.C.M. 1947, 32-3316; amd. Sec. 2, Ch. 585, L. 1987.

Cross-References

Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
"Motor vehicle" defined, 61-1-102.
"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Bus" defined, 61-1-115.

61-3-606. Penalty for violation of camper decal requirement. Operation of a camper in violation of 61-3-524 is a misdemeanor punishable by a fine not to exceed $50.

History: En. Sec. 3, Ch. 414, L. 1973; R.C.M. 1947, 53-646.

Cross-References

Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
"Camper" defined, 61-1-129.

61-3-607. Penalty for tampering with odometer or violating odometer statement requirements. (1) It is unlawful for a person to tamper with the odometer of a motor vehicle. It is considered tampering if a person removes, turns back, or changes the reading on the odometer, except when repairing or replacing a defective odometer and setting it anew to show the true mileage, or if a person sells, offers for sale, uses, installs, or causes to be installed any device that causes the odometer to register a mileage reading other than the true mileage for the purpose of deceiving a prospective purchaser. For purposes of this section, the true mileage is that driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) A person who purposely or knowingly violates the provisions of 61-3-206 or subsection (1) of this section is punishable by a fine of not more than $5,000 or imprisonment in the state prison for a period of not more than 10 years, or both. If that person is a motor vehicle dealer, the department shall revoke the dealer's license. Action by the department under this subsection must conform to the contested case procedures in Title 2, chapter 4.

History: En. Sec. 3, Ch. 324, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 4, Ch. 272, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at end of first sentence after "is", substituted final clause relating to fine amount and imprisonment term for "guilty of a misdemeanor" and in middle of second sentence, after "shall", deleted "place the dealer in a 1-year probationary license status upon a first conviction. For a second or subsequent conviction of a violation of 61-3-206 or subsection (1) of this section, the department may suspend or".

Cross-References

Transfer of interest, 61-3-201.

Part 7

Registration of Foreign Vehicles

61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-504, or 61-3-537, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; re-en. Sec. 1760.7, R.C.M. 1935; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967; R.C.M. 1947, 53-129; amd. Sec. 46, Ch. 421, L. 1979; amd. Sec. 35, Ch. 614, L. 1981; amd. Sec. 13, Ch. 140, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 516, L. 1985; amd. Sec. 34, Ch. 611, L. 1987.

Cross-References

Duties of County Treasurer, 7-6-2111.

Duties of Department of Justice — records, 61-3-101.

Registrant as prima facie owner of vehicle, 61-3-105.

Registration, Title 61, ch. 3, part 3.

Alternative gross weight fees on truck trailer combinations, 61-10-203.

GVW licensing requirements — exemptions, 61-10-214.

61-3-702. Foreign vehicles to display number plates. All foreign registered and licensed motor vehicles shall also carry in plain sight thereon the license plates or device from such other state or foreign country.

History: En. Sec. 8, Ch. 121, L. 1929; amd. Sec. 8, Ch. 126, L. 1933; re-en. Sec. 1760.8, R.C.M. 1935; R.C.M. 1947, 53-130.

Cross-References

Residents operating motor vehicles — licenses issued by another state forbidden, 61-3-302.

Number plates, 61-3-332.

61-3-703. Purpose. Sections 61-3-701 and 61-3-702 shall be solely for the purpose of taxation, registration, and identification of vehicles operated in this state that have paid a license in another state or foreign country, and otherwise than as herein specifically set forth shall not be construed as a repeal of any laws or parts of laws having to do with the registration or licensing of automobiles within the state.

History: En. Sec. 10, Ch. 121, L. 1929; amd. Sec. 9, Ch. 126, L. 1933; re-en. Sec. 1760.9, R.C.M. 1935; R.C.M. 1947, 53-131; amd. Sec. 4, Ch. 598, L. 1981.

61-3-704. Penalty. Any person operating a vehicle in violation of the intent and purpose of 61-3-701 or 61-3-702 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $10 or more than $50 or confined in the county jail for not more than 30 days or both such fine and imprisonment.

History: En. Sec. 11, Ch. 121, L. 1929; amd. Sec. 10, Ch. 126, L. 1933; re-en. Sec. 1760.10, R.C.M. 1935; R.C.M. 1947, 53-132.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-3-705 and 61-3-706 reserved.

61-3-707. Foreign vehicles used for transportation in connection with employment. (1) Before a motor vehicle taxed pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of taxes must apply for and obtain a window decal.

(2) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(3) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(4) There is a $2 fee for each decal, and money collected from this fee shall be deposited to the county general fund. The $2 fee is in addition to the tax.

(5) A current window decal must be displayed on the lower right-hand corner of the windshield.

History: En. Sec. 3, Ch. 598, L. 1981.

Cross-References

Junk vehicle disposal fee, 61-3-508.

61-3-708 through 61-3-710 reserved.

61-3-711. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements, and declarations with other states, provinces, territories, and countries with respect to vehicles registered in this and such other states, provinces, territories, and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963; R.C.M. 1947, 53-701.

Cross-References

Assessment of proportionally registered interstate motor vehicle fleets, 15-24-101.

Special fuel user registration card, 15-70-302.

Multistate Highway Transportation Agreement, Title 61, ch. 10, part 11.

61-3-712. Definitions. As used in 61-3-711 through 61-3-733 the following definitions apply:

(1) "Apportionable vehicle" means a vehicle which is used or intended for use in more than one jurisdiction and used for the transportation of persons for hire, compensation, or profit, or designed or used primarily for the transportation of property.

(2) "Fleet" means one or more apportionable vehicles.

(3) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, and a state or province of a foreign country.

(4) "Legal residence" means a jurisdiction where the person lives or conducts his business. This residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in 61-3-711 through 61-3-733 shall be confined to the definition given, and shall not be confused with the word "domicile". This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) "Preceding year" means a period of 12 consecutive months fixed by the department of transportation, which period shall be within 18 months immediately preceding the commencement of the registration or license year for which proportional registration is sought. The department in fixing the period shall make it conform to the terms, conditions, and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

(6) (a) "Properly registered", as applied to place of registration, means:

(i) the jurisdiction where the person registering the vehicle has his legal residence;

(ii) in the case of an apportionable vehicle, the jurisdiction in which it is registered if the enterprise in which the vehicle is used has a place of business therein and if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled in or from the place of business and the vehicle has been assigned to the place of business; or

(iii) in the case of an apportionable vehicle, the jurisdiction where because of an agreement or arrangement between two or more jurisdictions or pursuant to a declaration the vehicle has been registered as required by that jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the highway commission shall make the final determination, but in making the determination, the commission may confer with departments of the other jurisdictions affected.

History: En. Sec. 2, Ch. 206, L. 1963; amd. Sec. 190, Ch. 316, L. 1974; R.C.M. 1947, 53-702(1), (2), (4) thru (6), (10); amd. Sec. 1, Ch. 36, L. 1981; amd. Sec. 1, Ch. 414, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Residence — rules for determining, 1-1-215.

61-3-713. Authority of department of transportation. The department of transportation may execute or make arrangements, agreements, or declarations to carry out 61-3-711 through 61-3-733.

History: En. Sec. 4, Ch. 206, L. 1963; amd. Sec. 191, Ch. 316, L. 1974; R.C.M. 1947, 53-704; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highways — legislative policy and intent, 60-1-102.

61-3-714. Authority for reciprocity agreements, provisions, reciprocity standards. The department of transportation may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in those jurisdictions, and for which evidence of compliance is supplied, benefits, privileges, and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon those vehicles or owners with respect to the operation or ownership of the vehicles under the laws of this state. The agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of those other jurisdictions, shall receive exemptions, benefits, and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in the jurisdiction when operated in this state. The agreement or arrangement shall, in the judgment of the department, be in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963; amd. Sec. 192, Ch. 316, L. 1974; R.C.M. 1947, 53-705; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

61-3-715. Base state registration reciprocity. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction, which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963; R.C.M. 1947, 53-706.

61-3-716. Proportional registration of fleet vehicles. If a jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes, or other fixed fees on those vehicles on an apportionment basis commensurate with and determined by the miles traveled on and the use made of the jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in any other jurisdiction under this apportionment basis from the requirements of full payment of its own registration, license fees, taxes, or other fixed fees, then the department may, by agreement, adopt such exemption with respect to vehicles of these fleets, whether owned by residents or nonresidents of this state and regardless of where based. An agreement, under the terms, conditions, or restrictions the department considers proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state be permitted to pay registration, license fees, taxes, or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. This agreement may not authorize or be construed to authorize a vehicle so registered to be operated in intrastate commerce in this state unless the owner of the vehicle has been granted intrastate authority or rights by the public service commission, if a grant is otherwise required by law. The department of transportation may adopt rules it considers necessary to carry out and administer this section, and the registration of fleet vehicles under 61-3-711 through 61-3-733 is subject to the rights, terms, and conditions granted by or contained in any applicable agreement, arrangement, or declaration made by the department.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965; amd. Sec. 193, Ch. 316, L. 1974; R.C.M. 1947, 53-707; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Assessment of proportionally registered interstate motor vehicle fleets, 15-24-101.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

61-3-717. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the department may examine the laws and requirements of the jurisdiction and declare the extent and nature of exemptions, benefits, and privileges to be extended to vehicles properly registered or licensed in the other jurisdiction, or to the owners of the vehicles which are in the judgment of the department in the best interests and fair and equitable to this state and its citizens determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963; amd. Sec. 194, Ch. 316, L. 1974; R.C.M. 1947, 53-708.

61-3-718. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into or a declaration issued under the authority of 61-3-711 through 61-3-733 may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits, and privileges extended by such agreement, arrangement, or declaration.

History: En. Sec. 9, Ch. 206, L. 1963; R.C.M. 1947, 53-709.

Cross-References

Motor carriers — leasing of power equipment, 69-12-611.

61-3-719. Automatic reciprocity. On and after March 7, 1963, if no agreement, arrangement, or declaration is in effect with respect to another jurisdiction as authorized by 61-3-711 through 61-3-733, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits, and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963; R.C.M. 1947, 53-710.

Cross-References

Motor carriers, Title 69, ch. 12.

61-3-720. Proportional registration not exclusive. Nothing contained in 61-3-711 through 61-3-733 relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963; R.C.M. 1947, 53-711.

Cross-References

Special permits, 61-10-121.

61-3-721. Proportional registration of fleet vehicles, application, fee formula, and payment. (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the information pertinent to vehicle registration that is required by the department.

(2) The application for each fleet may be accompanied by a fee payment computed as follows:

(a) divide in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and part 2 of chapter 10, and the property taxes which are due on the fleet;

(c) multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Applications submitted with fees may be recomputed by the department and a statement furnished showing the overpayment or balance due.

(4) Applications submitted without fees shall be computed by the department and a statement furnished showing the amount of fees due.

History: En. Sec. 12, Ch. 206, L. 1963; amd. Sec. 2, Ch. 88, L. 1965; amd. Sec. 195, Ch. 316, L. 1974; amd. Sec. 1, Ch. 144, L. 1977; R.C.M. 1947, 53-712; amd. Sec. 2, Ch. 36, L. 1981; amd. Sec. 2, Ch. 414, L. 1983.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Application for registration, 61-3-303.

61-3-722. Registration and identification of proportionally registered vehicles — effect of such registration. (1) The department shall register the vehicles so described and issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees and property taxes as provided by law, for the application and for the stickers or devices issued. A fee of $2 shall be paid for each license plate, sticker, or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. The registration card shall, in addition to other information required by chapter 3, bear upon its face the number of the license, sticker, or other device issued for the proportionally registered vehicle and shall be carried in the vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority.

History: En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965; amd. Sec. 196, Ch. 316, L. 1974; R.C.M. 1947, 53-713.

Cross-References

Provision for interstate and international carriers, 69-12-103.

61-3-723. Proportional registration not applicable in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by 61-3-711 through 61-3-733, or by any contract, agreement, arrangement, or declaration made under the authority thereof, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of 61-3-711 through 61-3-733 shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963; R.C.M. 1947, 53-714.

61-3-724. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963; R.C.M. 1947, 53-715.

61-3-725. Withdrawal of fleet vehicles — procedure, credits, and accounting. (1) If a vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered, the owner of the fleet shall notify the department of transportation of that fact on forms prescribed by the department. The department may require the owner to surrender proportional registration cards and other identification devices which have been issued with respect to that vehicle. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold, or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to that vehicle shall be credited to the proportional registration account of the owner. This unused portion shall equal the amount paid with respect to the vehicle when it was first proportionally registered in the registration year, reduced by one-twelfth of the total annual gross vehicle weight fee of the vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the department. This credit shall be applied against liability for additional fees due during the registration year or for additional fees due upon audit under 61-3-728. If a credit is less than $5, it may not be made or entered. In no event may the amount be credited against fees other than those for the registration year, nor may any amount be subject to refund.

(2) If the owner replaces a vehicle withdrawn from the fleet at the same time as the withdrawal and the replacement vehicle is of the same or of a lesser weight category than the one withdrawn, the gross vehicle weight fees are transferable to the replacement vehicle. If the transfer is to a smaller vehicle, there may be no credit given or entered.

History: En. Sec. 16, Ch. 206, L. 1963; amd. Sec. 197, Ch. 316, L. 1974; R.C.M. 1947, 53-716; amd. Sec. 3, Ch. 36, L. 1981; amd. Sec. 3, Ch. 414, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

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Cross-References

GVW license transferable, 61-10-224.

61-3-726. New fleet — estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to the fleet for the preceding year in this and other jurisdictions. If operations were not conducted with this fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The department shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The department may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness of the estimate.

History: En. Sec. 17, Ch. 206, L. 1963; amd. Sec. 198, Ch. 316, L. 1974; R.C.M. 1947, 53-717.

61-3-727. Fleet registration — denial when no reciprocity. The department may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the department finds that the other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963; amd. Sec. 199, Ch. 316, L. 1974; R.C.M. 1947, 53-718.

61-3-728. Preservation of proportional registration records. An owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of 4 years following the year or period upon which the application is based. Upon request of the department, the owner shall make these records available to the department for audit as to accuracy of computations and payments or pay the reasonable costs of an audit at the owner's home office by an appointed representative of the department. The department may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of the owner.

History: En. Sec. 19, Ch. 206, L. 1963; amd. Sec. 200, Ch. 316, L. 1974; R.C.M. 1947, 53-719.

61-3-729. Relation to other state laws. The provisions of 61-3-711 through 61-3-733 shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963; R.C.M. 1947, 53-720.

Cross-References

Special fuel user registration card, 15-70-302.

61-3-730. Suspension of reciprocity benefits. The department may suspend or cancel the exemptions, benefits, or privileges granted under 61-3-711 through 61-3-733 to a person who violates any of the conditions or terms of the agreements, arrangements, or declarations or violates the laws of this state relating to motor vehicles, or rules lawfully adopted thereunder.

History: En. Sec. 21, Ch. 206, L. 1963; amd. Sec. 201, Ch. 316, L. 1974; R.C.M. 1947, 53-721; amd. Sec. 4, Ch. 36, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Traffic regulation, Title 61, ch. 8.

Size — weight — load, Title 61, ch. 10.

61-3-731. Agreements to be written, filed, and available for distribution. All agreements, arrangements, or declarations, or amendments thereto, shall be in writing and shall be filed with the department, and the department shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963; amd. Sec. 202, Ch. 316, L. 1974; R.C.M. 1947, 53-722.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Duties of Department, 60-2-202.

61-3-732. Continued validity of existing reciprocity agreements. All reciprocity and proportional registration agreements, arrangements, and declarations relating to vehicles in force and effect as of March 7, 1963, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963; R.C.M. 1947, 53-723.

61-3-733. Law supplemental to motor vehicle registration law. Sections 61-3-711 through 61-3-732 are supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963; amd. Sec. 203, Ch. 316, L. 1974; R.C.M. 1947, 53-724.

CHAPTER 4

SALES AND DISTRIBUTION OF MOTOR VEHICLES

Part 1 — Dealers

61-4-101. Application for dealer's license or wholesaler's license.
61-4-102. Fees — restrictions on licensees.
61-4-103. Assignment of dealer plates.
61-4-104. Record of purchase or sale.
61-4-105. Criminal penalty — civil penalty imposed by agency.
61-4-106. Transfer of license.
61-4-107. Cease and desist order.
61-4-108. Exemptions.
61-4-109 and 61-4-110 reserved.
61-4-111. Used motor vehicles — transfer to and from dealers.
61-4-112. New motor vehicles — transfers by dealers.
61-4-113. New motor vehicles towed into state to be labeled.
61-4-114 through 61-4-118. Repealed.
61-4-119. Penalty.
61-4-120. Application for auto auction license — general regulations.
61-4-121. Twenty-day permit — limitation on issuance — violation — penalty.
61-4-122 through 61-4-130 reserved.
61-4-131. Definitions.
61-4-132. Right of designated family member to succeed in dealership ownership.
61-4-133. Refusal to honor succession to ownership — notice required.
61-4-134. Procedure to determine right to succeed.
61-4-135. Written designation of succession unaffected.
61-4-136. Violation — penalty.

61-4-137. Civil damages.

Part 2 — Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers

61-4-201. Definitions.
61-4-202. License requirements.
61-4-203. Administration.
61-4-204. Filing agreement — product liability.
61-4-205. Limitations on cancellation and termination.
61-4-206. Objections — hearing.
61-4-207. Determination of good cause.
61-4-208. Coercion prohibited.
61-4-209. Cease and desist orders.
61-4-210. Penalties — administrative penalties.
61-4-211. Repealed.
61-4-212 through 61-4-220 reserved.
61-4-221. Manufacturer's representative's license plates.
61-4-222. Fees.
61-4-223. Assignment of numbers.

Part 3 — Transportation of Vehicles

61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods.
61-4-302. One-trip fee in addition to permit and plate fees payable quarterly.
61-4-303. Disposition of funds collected.
61-4-304. Fees provided for to be in addition to fees now payable under chapter 12, Title 69.
61-4-305. Driveaway or towaway fees in lieu of other fees payable — election to pay other fees.
61-4-306. Exemptions from fees.
61-4-307. Display of plates.
61-4-308. List of holders of permits and transit plates.
61-4-309. Definition.
61-4-310. Single movement permit — fee — limitation — county treasurer to issue.
61-4-311. Fees credited to general road fund.

Part 4 — Monopolies in Financing Sale of Motor Vehicles

61-4-401. Declaration of policy.
61-4-402. Definitions.
61-4-403. Certain financing agreements prohibited.
61-4-404. Threats prima facie evidence.
61-4-405. Penalty.
61-4-406. Suit for injury to business or property.

Part 5 — New Motor Vehicle Warranties—Remedies

61-4-501. Definitions.
61-4-502. Notice — warranty enforceable after warranty period — when.
61-4-503. Replacement for nonconformity to warranty.
61-4-504. Reasonable number of attempts — presumption.
61-4-505. Dealer exemption — liability to manufacturer.
61-4-506. Provisions nonexclusive — applicability of U.C.C. — defenses.
61-4-507. Exhaustion of remedies under federal law.
61-4-508 through 61-4-510 reserved.
61-4-511. Manufacturer's dispute settlement procedure — certification — prohibited contents.
61-4-512. Annual audit — revocation or suspension of certification.
61-4-513 and 61-4-514 reserved.
61-4-515. Arbitration procedure.
61-4-516. Composition of arbitration panel.
61-4-517. Implementation of arbitration.
61-4-518. Arbitration — role of department of commerce — expert.

61-4-519. Action by arbitration panel — decision.
61-4-520. Nonconforming procedure — arbitration de novo.
61-4-521 through 61-4-524 reserved.
61-4-525. Notice on resale of replaced vehicle.
61-4-526. Records of disputes.
61-4-527 through 61-4-530 reserved.
61-4-531. Nondelegable.
61-4-532. Rulemaking.
61-4-533. Penalty.

Chapter Cross-References

U.C.C. — sales, Title 30, ch. 2.

Sales, Title 30, ch. 11.

Retail installment sales, Title 31, ch. 1, part 2.

Part 1

Dealers

Part Cross-References

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

"Dealer" defined, 61-1-314.

61-4-101. Application for dealer's license or wholesaler's license. (1) (a) A verified application must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 for licensure as a dealer; or

(ii) business as a wholesaler as defined in 61-1-319 in order to be licensed as a wholesaler.

(b) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(c) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the licensee may operate his business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the:

(A) applicant has an established place of business that includes a lot or lots upon which motor vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business shall display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with his application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold; otherwise, all other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 1, Ch. 73, L. 1979; amd. Sec. 47, Ch. 421, L. 1979; amd. Sec. 2, Ch. 443, L. 1981; amd. Sec. 1, Ch. 282, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 27, Ch. 516, L. 1985; amd. Sec. 1, Ch. 179, L. 1989; amd. Sec. 1, Ch. 523, L. 1989; amd. Sec. 2, Ch. 383, L. 1991; amd. Sec. 14, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 383 throughout section, after "dealer", inserted reference to wholesaler; at beginning of (1)(a) inserted language requiring verified application to be filed by each person; in (1)(a)(i), after "exchanging", deleted "offering", after "consignment" deleted "soliciting, advertising the sale of", after "61-1-104" deleted "shall file, by mail or otherwise, in the office of the department a verified application", and after "dealer" deleted "on a blank to be furnished by the department for that purpose and containing the information required"; inserted (1)(a)(ii) requiring filing of application by wholesaler defined in 61-1-319; inserted (1)(b) relating to prima facie evidence as dealer and use of demonstrator license plates; in (1)(c), at end of first sentence after "patrol", inserted language authorizing application verification by Department representative on Department form and in third sentence, before "may", substituted "licensee" for "dealer" and before "plates" inserted "or demonstrator"; in (2)(b), before "trailer", inserted "dealer and for the use of "RV" plates; as a" and after ""MCD" plates" inserted "or as a wholesaler and for the use of demonstrator plates"; in (2)(b)(i)(A), after "has", substituted language requiring applicant to provide statement that he has a business that displays motor vehicles and has a building where sales are made for "a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business and that vehicles are offered for sale"; inserted (2)(b)(i)(B) requiring wholesaler applicant to provide statement that business includes permanent nonresidential building or office where records are kept for inspection; inserted (2)(c) requiring two or more dealer or wholesaler businesses that share location to segregate records, facilities, and inventory and to display signs visible at 150 feet; in (2)(e) changed internal reference; in (3)(a), before "bond", deleted "good and sufficient" and after "bond" substituted language establishing the dollar amount of licensee's surety bonds for "in the sum of $5,000, and the bond"; in (3)(b), at end of first sentence, substituted "on the bond" for "the judgment from the department" and at beginning of second sentence substituted "The judgment must determine" for "The department is responsible for payment under this section, in an amount not to exceed the maximum bond amount, only if the judgment on which the payment is based determines", before "unlawful" substituted "licensee's" for "dealer's", and after "damage" inserted "before payment on the bond is required"; and made minor changes in style.

Chapter 724 in (1)(c), substituted "department" for "Montana highway patrol"; in (2)(b), after "recreational vehicle", inserted "dealer and for the use of "RV" plates, as a"; and made minor changes in style.

Cross-References

Off-highway vehicle dealer registration certificate, 23-2-818.

Suretyship, Title 28, ch. 11, part 4.

Highway Patrol — general duties of Department of Justice, 44-1-102.

"Recreational vehicle" defined, 61-1-132.

"Dealer" defined, 61-1-314.

Duties of Department of Justice — records, 61-3-101.

Exemptions of vehicles not capable of operation on highways, 61-3-432.

Registration — penalties — enforcement, 61-3-602.

61-4-102. Fees — restrictions on licensees. (1) Upon making such application, the applicant shall pay to the department, in addition to the fees required of dealers and wholesalers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the department shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after investigation, to issue a license to an applicant as allowed by law.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:

(a) (i) all dealers in motor vehicles and recreational vehicles, a fee of $25, which shall entitle such dealer to one set of number plates, and $25 additional fee for each additional set of number plates, subject to the following limitations on the number of additional sets allowed a dealer:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the department.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates or a licensed wholesaler is entitled to purchase demonstrator plates at a cost determined by the department to offset the cost of production. Demonstrator plates must be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the department. Wholesaler demonstrator plates must be distinguished from dealer demonstrator plates in a manner determined by the department.

(b) dealers in motorcycles, quadricycles, and trailers, including housetrailers, $45; and

(c) wholesalers in used motor vehicles, recreational vehicles, trailers (including semitrailers and special mobile equipment), and motorcycles (including quadricycles), $30.

(3) If a dealer or wholesaler is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee above given.

(4) A dealer or wholesaler in motor vehicles, recreational vehicles, or trailers who maintains more than one place of business or who maintains a branch establishment or establishments shall register and pay a registration or license fee for each place of business or establishment. A dealer may sell vehicles only from his licensed place of business unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

(5) A new applicant for a used motor vehicle dealer or wholesaler license shall pay $300 to the department in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer or wholesaler license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

History: Ap. p. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; Sec. 53-118, R.C.M. 1947; Ap. p. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec.1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; Sec. 53-122, R.C.M. 1947; R.C.M. 1947, 53-118(part), 53-122(part); amd. Sec. 1, Ch. 228, L. 1979; amd. Sec. 3, Ch. 443, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 28, Ch. 516, L. 1985; amd. Sec. 3, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section, after reference to dealer, inserted reference to wholesaler; in (1), in third sentence before "license", deleted "dealer's" and inserted last sentence authorizing Department to refuse license after investigation; in (2)(a)(ii), in first sentence after "plates", inserted "or a licensed wholesaler" and inserted last sentence requiring wholesaler plates to be distinguished from dealer plates; inserted (2)(c) establishing $30 fee for certain wholesalers; in (4) inserted second, third, and fourth sentences relating to procedures for sale of vehicles by dealers; and made minor changes in style.

Cross-References

Recreational vehicle defined, 61-1-132.

Department of Justice — disposition of fees, 61-3-108.

Number plates, 61-3-332.

61-4-103. Assignment of dealer plates. (1) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, recreational vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle- or quadricycle-type vehicle, the department shall assign to the dealer a distinctive serial license number as a dealer and after payment of fees furnish every qualified dealer in motor vehicles with sets of number plates as required according to need, which need must be justified by the dealer with the initial application for license and each renewal. Assigned number plates must be similar to number plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned the dealer, the letter "D" if the dealer is authorized to sell new motor vehicles (including trucks and truck trailers); the letters "RV" if the dealer is authorized to sell recreational vehicles; the letters “UD” if the dealer is authorized to sell used motor vehicles (including used trucks and used truck trailers); the letters “DTR” if the dealer is authorized to sell trailers, semitrailers, or special mobile equipment (new or used); and the letters “MCD” if the dealer is authorized to sell vehicles of the motorcycle or quadricycle type (new or used).

(2) With the exception of a dealer authorized to sell new motor vehicles (including trucks and truck trailers) and to use the “D” plate or demonstrator plate, a dealer or wholesaler authorized to transact business under the provisions of this section may not offer for sale or trade any vehicle described in this section except the vehicles that are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No plate assigned to a dealer or wholesaler may be used on any vehicle other than the type described in this section. A wholesaler may not sell a motor vehicle to a person who is not a licensed dealer. A dealer authorized to sell new motor vehicles and assigned a “D” plate or demonstrator plate is authorized to sell both new and used motor vehicles (including trucks and truck trailers), and the plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.

(3) The department shall cause to be placed on each set of license plates issued to a dealer a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer must follow the prefix of the county, and the number of plates issued the dealer must follow the prefix of the county and the number of the dealer, the dealer’s number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer’s number by a dash, as follows: dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3. Wholesalers who receive demonstrator plates under this part must be issued license plates that are of a similar sequence to dealer and dealer demonstrator plates and display a “wholesaler” or “wholesale dealer” identifier conspicuously displayed upon the plates.

(4) Dealers properly licensed under this section are authorized to use and display dealer’s license plates on a motor vehicle held for bona fide sale or used in the conduct of the dealer’s business in selling or demonstrating motor vehicles and operated by or under the control of the dealer, his officers or employees. For purposes of this provision, “officers and employees” include only the persons listed on the manufacturer’s franchise agreement or the importer’s distribution agreement and their spouses or such other persons upon whom the dealer has paid social security taxes as a full-time employee. A dealer’s or wholesaler’s license plate may not be used or displayed on vehicles normally used for hire, lease, or rental or for purposes not incident to the business of a motor vehicle dealer. A dealer is accountable for each plate issued and shall certify quarterly to the department the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.

(5) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by the sheriff or any other law enforcement officer, that a dealer or wholesaler has been improperly licensed, has used the dealer's license in a manner other than the one authorized in this section, has provided a material misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the requirements of this section, or whose criminal conduct renders him unfit for licensure, the department may revoke the dealer's or wholesaler's license. A person, firm, corporation, or association may not, for commission or profit, engage in the business of buying, selling, exchanging, or acting as a broker of new motor vehicles, trailers, or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than 500 pounds).

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 4, Ch. 443, L. 1981; amd. Sec. 2, Ch. 282, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 29, Ch. 516, L. 1985; amd. Sec. 4, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section, after reference to dealer, inserted reference to wholesaler; in (2) inserted fourth sentence prohibiting a wholesaler from selling vehicle to person who is not a licensed dealer; in (3) inserted last sentence requiring wholesalers receiving plates to be issued plates of similar sequence to dealer plates; in (5), in first sentence after "authorized in this section", inserted language relating to misstatement of fact in license application and after "section" inserted "or whose criminal conduct renders him unfit for licensure"; and made minor changes in style.

Cross-References

Duties of Sheriff, 7-32-2121.

"Recreational vehicle" defined, 61-1-132.

Number plates, 61-3-332.

Sales tax on new motor vehicles — exemptions, 61-3-502.

Junk vehicle disposal fee, 61-3-508.

61-4-104. Record of purchase or sale. A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purchases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the engine number, if any, maker's number, if any, chassis number, if any, and other numbers or identification marks that appear on the motor vehicle and must include a statement that a number has been obliterated, defaced, or changed if such is the fact. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear thereon. The dealer or wholesaler must also have in his possession, from the time the motor vehicle is delivered to him until it has been disposed of by him, a duly assigned certificate of ownership from the owner of the motor vehicle to the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign the certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained within the building referred to in 61-4-101(2)(b)(i). An authorized representative of the department, upon presentation of his credentials, may inspect and have access to and copy any records required under this chapter.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(4); amd. Sec. 48, Ch. 421, L. 1979; amd. Sec. 3, Ch. 282, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 5, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of first sentence, after "dealer", inserted "or wholesaler", in fourth sentence, after "dealer", inserted "or wholesaler must", after "possession" inserted clause requiring certificate from delivery until disposal, and after "vehicle" substituted "to the dealer or wholesaler" for "from the time the motor vehicle is delivered to him until it has been disposed of by him", and inserted fifth and sixth sentences providing that failure of dealer or wholesaler to take assignment of certificates constitutes a violation and requiring records to be kept and maintained in a permanent nonresidential building; and made minor changes in style.

Cross-References

Obscuring identity of machine, 45-6-326.

Certificates of ownership — transfer of interest, 61-3-201.

Certificate of ownership — contents, 61-3-202.

Penalty for altering identification number, 61-3-604.

61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Any person violating the provisions of 61-4-101 through 61-4-104 or 61-4-120 is guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes of this section, every sale of a motor vehicle in violation of the provisions of 61-4-101 through 61-4-104 or 61-4-120 is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Any person violating the provisions of 61-4-101 through 61-4-104 or 61-4-120 may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $200 for each violation;

(b) suspension of the motor vehicle dealer, wholesaler, or auto auction license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer, wholesaler, or auto auction license; or

(d) any combination of subsections (2)(a) through (2)(c).

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; re-en. Sec. 1759.4, R.C.M. 1935; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969; amd. Sec. 2, Ch. 226, L. 1971; amd. Sec. 2, Ch. 244, L. 1971; amd. Sec. 1, Ch. 535, L. 1977; R.C.M. 1947, 53-118(part); amd. Sec. 4, Ch. 282, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 3, Ch. 523, L. 1989; amd. Sec. 6, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: In three places, after "61-4-104", inserted "or 61-4-120"; and in (2)(b) and (2)(c), after "dealer", inserted "wholesaler, or auto auction".

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

"Recreational vehicle" defined, 61-1-132.

"Dealer" defined, 61-1-314.

Duties of Department of Justice — records, 61-3-101.

Registration — penalties — enforcement, 61-3-602.

61-4-106. Transfer of license. A registered dealer or wholesaler who sells or disposes of his entire business to another person may have his certificate of registration transferred to the purchaser upon filing with the department a statement containing the name of the registered dealer or wholesaler, the number under which the business is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of the statement, accompanied by a filing fee of $2, the department shall note upon the registration record of the dealer or wholesaler the change of ownership. A certificate of registration may not be transferred unless the entire business of the dealer or wholesaler holding the certificate of registration is sold and disposed of, and a certificate of registration may not be transferred to any person other than the purchasers of the business.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R.C.M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; re-en. Sec. 1760, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965; amd. Sec. 4, Ch. 226, L. 1971; amd. Sec. 2, Ch. 243, L. 1977; R.C.M. 1947, 53-122(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: In four places, after "dealer", inserted "or wholesaler"; and made minor changes in style.

Cross-References

Duties of Department of Justice — records, 61-3-101.

Registration — exemptions of vehicles not capable of operation on highways, 61-3-432.

61-4-107. Cease and desist order. When the department has reasonable cause to believe, from information furnished to it or from an investigation made by it, that a person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon the person, by certified mail, a cease and desist order requiring him to cease and desist from further engaging in that business. If the person fails to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court shall proceed in the action as in other actions for injunctions.

History: En. Sec. 1, Ch. 49, L. 1989.

61-4-108. Exemptions. (1) This part does not require licensure of, or restrict or prohibit a financial institution, as defined in 32-6-103:

(a) in the selling of collateral repossessed on default of a loan made by the financial institution;

(b) in the conduct of a motor vehicle sales promotion in affiliation with one or more licensed dealers; or

(c) in the conduct of a motor vehicle sales promotion in affiliation with a person regularly engaged in a bona fide vehicle rental business if the purpose of the sale is to dispose of used motor vehicles used in the rental business.

(2) This part does not require licensure of an auctioneer whose business consists primarily of the sale of personal property other than motor vehicles.

History: En. Sec. 2, Ch. 523, L. 1989.

61-4-109 and 61-4-110 reserved.

61-4-111. Used motor vehicles — transfer to and from dealers. (1) The provisions of 61-3-201(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

(a) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the department and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (1)(b) hereof, and a copy shall be retained by the dealer for his file. It is unlawful for the dealer to issue more than one sticker per vehicle sale.

(b) Within 4 working days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of 61-3-322, and a copy of the sticker affixed to said vehicle by the dealer, and the department, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(c) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (1)(b) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of subsection(1)(b) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within 3 days after their receipt.

(2) Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration.

History: En. Sec. 3, Ch. 138, L. 1971; amd. Sec 2, Ch. 399, L. 1977; R.C.M. 1947, 53-109.1; amd. Sec. 1, Ch. 118, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

New registration required for transferred vehicle, 61-3-317.

Expiration of registration on transfer of ownership of vehicle, 61-3-334.

Time for payment of fees, 61-10-222.

61-4-112. New motor vehicles — transfers by dealers. (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a sticker as prescribed in 61-4-111(1)(a) for transfers of used motor vehicles and retain a copy of the sticker;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the sticker issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502(8)(b).

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration together with a statement of lien as provided in 61-3-202.

History: En. Sec. 4, Ch. 138, L. 1971; R.C.M. 1947, 53-109.2; amd. Sec. 1, Ch. 428, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 5, Ch. 517, L. 1989.

Cross-References

Duties of County Treasurer, 7-6-2111.

Time for payment of fees, 61-10-222.

61-4-113. New motor vehicles towed into state to be labeled. (1) Any firm, person, corporation, or association or any of their employees offering for sale or carrying on the business of selling new motor vehicles in the state of Montana shall be required to prominently label any motor vehicle which has been driven under its own power, pushed, towed, or propelled by any other means to sufficiently identify it from other new vehicles that have not been driven, pushed, or towed and shall be required to furnish the purchaser of any such motor vehicle with a certificate, on a printed form to be furnished by the department upon request by such dealers, showing the actual number of miles the motor vehicle has been driven under its own power and the number of miles the vehicle has been pushed, towed, or otherwise propelled upon its own wheels. Any firm, person, corporation, or association or any of their employees who fails to prominently label and issue the certificate or who knowingly issue a certificate that is untrue and calculated to mislead the purchaser is guilty of a misdemeanor.

(2) The provisions of this section do not apply to motor vehicles during the period of time that such motor vehicles are used for bona fide demonstrating purposes.

History: En. Secs. 1, 2, Ch. 26, L. 1937; R.C.M. 1947, 53-301, 53-302; amd. Sec. 49, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Permit and transit plates for new vehicles being transported by driveaway or towaway methods, 61-4-301.

61-4-114 through 61-4-118. Repealed. Sec. 6, Ch. 39, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

61-4-114. (1)En. Sec. 1, Ch. 209, L. 1971; Sec. 53-118.6, R.C.M. 1947; amd. and redes. 32-3315.1 by Sec. 168, Ch. 316, L. 1974; Sec. 32-3315.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; Sec. 32-3319, R.C.M. 1947; R.C.M. 1947, 32-3315.1, 32-3319(part); amd. Sec. 50, Ch. 421, L. 1979.

61-4-115. Ap. p. Sec. 2, Ch. 209, L. 1971; Sec. 53-118.7, R.C.M. 1947; amd. and redes. 32-3315.2 by Sec. 169, Ch. 316, L. 1974; Sec. 32-3315.2, R.C.M. 1947; Ap. p. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R.C.M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974; Sec. 32-3320, R.C.M. 1947; R.C.M. 1947, 32-3315.2, 32-3320(part).

61-4-116. En. Sec. 3, Ch. 209, L. 1971; Sec. 53-118.8, R.C.M. 1947; amd. and redes. 32-3315.3 by Sec. 170, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.3.

61-4-117. En. Sec. 4, Ch. 209, L. 1971; Sec. 53-118.9, R.C.M. 1947; amd. and redes. 32-3315.4 by Sec. 171, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.4.

61-4-118. En. Sec. 5, Ch. 209, L. 1971; Sec. 53-118.10, R.C.M. 1947; amd. and redes. 32-3315.5 by Sec. 172, Ch. 316, L. 1974; R.C.M. 1947, 32-3315.5.

61-4-119. Penalty. A person violating a provision of 61-4-111 or 61-4-112 is guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. Every violation of 61-4-111 and 61-4-112 is considered a separate offense.

History: En. Sec. 2, Ch. 118, L. 1981; amd. Sec. 8, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment: Increased minimum fine from $25 to $250 and maximum fine from $100 to $500; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-4-120. Application for auto auction license — general regulations. (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the Montana highway patrol or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises (street address, city, county, and state) where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a

vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the permits. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing of similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the identification number or engine number, if any;

(ii) other numbers or identification marks on the motor vehicle; and

(iii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number; name, address, and signature of transferor; name, license number, and signature of transferee; and the date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206.

History: En. Sec. 10, Ch. 383, L. 1991.

Cross-References

Wholesaler, 61-1-319.

61-4-121. Twenty-day permit — limitation on issuance — violation — penalty. (1) A dealer may not issue more than one 20-day permit under 61-4-111 or 61-4-112 per vehicle sale.

(2) A dealer who violates the provisions of subsection (1) is subject to revocation of the privilege to issue 20-day permits for a period of time determined by the department.

History: En. Sec. 11, Ch. 383, L. 1991.

61-4-122 through 61-4-130 reserved.

61-4-131. Definitions. As used in 61-4-131 through 61-4-137, the following definitions apply:

(1) "Department" means the department of commerce.

(2) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

History: En. 51-609 by Sec. 1, Ch. 381, L. 1977; R.C.M. 1947, 51-609(1), (3); amd. Sec. 2, Ch. 274, L. 1981.

Cross-References

Department of Commerce, 2-15-1801.

Estates, Trusts, and Fiduciary Relationships, Title 72.

61-4-132. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided he gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of his intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

History: En. 51-610 by Sec. 2, Ch. 381, L. 1977; R.C.M. 1947, 51-610.

61-4-133. Refusal to honor succession to ownership — notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 61-4-134, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by law.

History: En. 51-611 by Sec. 3, Ch. 381, L. 1977; R.C.M. 1947, 51-611.

Cross-References

Notice — actual and constructive, 1-1-217.

Notice, 2-4-601.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

Unfair trade practices generally, Title 30, ch. 14, part 2.

61-4-134. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the succession would be

detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement shall continue in effect until the final determination of the issues raised in the complaint.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to part 7, chapter 4, Title 2.

History: **En. 51-612 by Sec. 4, Ch. 381, L. 1977; R.C.M. 1947, 51-612.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

61-4-135. Written designation of succession unaffected. Sections 61-4-131 through 61-4-137 do not preclude a dealer from designating any person as his successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.

History: **En. 51-613 by Sec. 5, Ch. 381, L. 1977; R.C.M. 1947, 51-613.**

61-4-136. Violation — penalty. Any person violating the provisions of 61-4-131 through 61-4-137 shall upon conviction be fined no more than $5,000.

History: **En. 51-614 by Sec. 6, Ch. 381, L. 1977; R.C.M. 1947, 51-614.**

61-4-137. Civil damages. Any dealer suffering pecuniary loss due to a violation of 61-4-131 through 61-4-137, upon prevailing in a civil action therefor, is entitled to damages equal to three times the pecuniary loss together with court costs and reasonable attorneys' fees.

History: **En. 51-615 by Sec. 7, Ch. 381, L. 1977; R.C.M. 1947, 51-615.**

Cross-References

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

Part 2

Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers

Part Cross-References

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

61-4-201. Definitions. As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Department" means the department of justice.

(3) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(4) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(5) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(6) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(7) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

(8) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(9) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(10) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment, which when installed form an integral part of the new motor vehicle and which constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

History: En. 51-601 by Sec. 1, Ch. 380, L. 1977; R.C.M. 1947, 51-601(1) thru (9), (11), (12); amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Termination or substantial alteration of farm implements dealership agreements, Title 30, ch. 11, part 8.

61-4-202. License requirements. (1) No new motor vehicle dealer, manufacturer, distributor, factory branch, or distributor branch may engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court; to financial institutions disposing of repossessed vehicles; or to a person disposing of his personal vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, and franchisors of motor vehicles as defined by this part.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(3) The following information, if applicable, shall be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) The license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(5) No new motor vehicle may be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this part. Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer must obtain a license under part 1 of this chapter. The obtaining of a license under this part or Title 61, chapter 4, part 1 conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regulating new motor vehicle dealers, manufacturers, importers, and distributors.

History: En. 51-602 by Sec. 2, Ch. 380, L. 1977; R.C.M. 1947, 51-602; amd. Sec. 1, Ch. 557, L. 1979; amd. Secs. 2, 3, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Writ of Attachment — execution, Title 27, ch. 18, part 3.

Receivers, Title 27, ch. 20.

Small business licensing coordination, Title 30, ch. 16.

Department of Justice — disposition of fees, 61-3-108.

Trust administration, Title 72, ch. 34.

61-4-203. Administration. The department shall supervise and regulate all persons required by this part to be licensed. In the supervision and regulation thereof the department may:

(1) make investigations it considers necessary;

(2) conduct hearings and compel attendance of witnesses at the hearings pursuant to the Montana Administrative Procedure Act; and

(3) prescribe rules it determines necessary to carry out the provisions of this part.

History: En. 51-603 by Sec. 3, Ch. 380, L. 1977; R.C.M. 1947, 51-603; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Montana Administrative Procedure Act — subpoenas and enforcement — compelling testimony, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-4-204. Filing agreement — product liability. (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not affect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer must compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

History: En. 51-604 by Sec. 4, Ch. 380, L. 1977; R.C.M. 1947, 51-604(1) thru (3), (5), (6); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 229, L. 1991.

Compiler's Comments

1991 Amendment: in (4), in fourth sentence, inserted exception clauses relating to household appliances in recreational vehicle and to truck rated at more than 10,000 pounds, after "authorized dealer" inserted "for labor, parts, and other expenses incurred by a dealer", substituted "same rate" for "dealer's regular established retail rate", after "rate" inserted language relating to time charged to retail customers, substituted "nonwarranty work of a like kind" for "similar work", and inserted last phrase relating to the flat rate labor time guide manual; and made minor changes in style.

Cross-References

Liability, Title 27, ch. 1, part 7.

Agency, Title 28, ch. 10.

U.C.C. — sales — warranties, 30-2-312 through 30-2-318.

Duties of Department of Justice — records, 61-3-101.

New motor vehicle warranties — remedies, Title 61, ch. 4, part 5.

61-4-205. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, no franchisor may cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) No franchisor may enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 30 days prior

to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. No notice of intention to terminate or not continue a franchise may be required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice shall be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices shall be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons, such copy to be in the form and substance and given in the manner the department finds appropriate.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to such a change in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, no license under 61-4-101 through 61-4-105 may be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(1) thru (4), (11), (12), (14); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 12, Ch. 383, L. 1991.

Compiler's Comments

1991 Amendment — Code Commissioner Instruction: The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Cross-References

Notice, 2-4-601.

Arbitration, Title 27, ch. 5.

Contracts in restraint of trade generally void, 28-2-703.

U.C.C. — bulk transfers, Title 30, ch. 6.

U.C.C. — investment securities — purchase, Title 30, ch. 8, part 3.

Canceled dealership contracts — repurchase requirements, Title 30, ch. 11, part 7.

61-4-206. Objections — hearing. (1) A person who receives or is entitled to receive a copy of a notice provided for in subsection (4) of 61-4-205 may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If no objection is filed within 15 days from the date the notice was received, the proposed action shall be approved.

(2) If a timely objection has been filed, the department shall enter an order fixing the time, which shall be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in subsection (4) of 61-4-205.

(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(4) Upon hearing, the franchisor has the burden of proof to establish that good cause exists to terminate or not continue the franchise. When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.

(5) The rules of evidence for such hearing shall be those found in chapter 4, Title 2. The department shall reasonably apportion all costs between the parties.

(6) The department may issue subpoenas, administer oaths, and compel the attendance of witnesses and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing shall be conducted pursuant to chapter 4, Title 2.

(7) A transcript of the testimony of each witness taken at the hearing shall be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(8) Any party to the hearing before the department may appeal pursuant to chapter 4, Title 2.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(5) thru (9), (13), (17), (18); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

61-4-207. Determination of good cause. (1) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee; and

(g) except as provided in subsection (2) of this section, failure by the franchisee to substantially comply with those requirements of the franchise that are determined by the department to be reasonable and material.

(2) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership;

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(3) In determining whether good cause has been established for entering into an additional franchise for the same line-make, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care for the new motor vehicle products of the line-make which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel.

History: En. 51-605 by Sec. 5, Ch. 380, L. 1977; R.C.M. 1947, 51-605(10), (15), (16); amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

61-4-208. Coercion prohibited. A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to:

(1) accept delivery of a new motor vehicle, a part, or an accessory therefor or any other commodity that has not been ordered by the dealer;

(2) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices; or

(3) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative thereof or do any other act unfair to the dealer by:

(a) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer; or

(b) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent thereof.

History: En. 51-606 by Sec. 6, Ch. 380, L. 1977; R.C.M. 1947, 51-606; amd. Sec. 1, Ch. 202, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) prohibiting use of coercion to obtain participation in advertising campaigns or sales promotions; and made minor changes in style.

Cross-References

Contracts — consent in general, Title 28, ch. 2, part 3.

Contracts — circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

61-4-209. Cease and desist orders. When the department has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon such person, by certified mail, a cease and desist order, requiring him to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions.

History: En. 51-608 by Sec. 8, Ch. 380, L. 1977; R.C.M. 1947, 51-608; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

61-4-210. Penalties — administrative penalties. (1) Except as provided in subsection (2), a person who violates any provision of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(3) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this part by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

(4) In addition to any other penalty provided for in this part, the department may take appropriate enforcement action on its own initiative in accordance with the contested case procedures of Title 2, chapter 4. A person

who violates the provisions of this part may be subject to administrative action and a civil penalty not to exceed $500 for each violation.

History: En. 51-604, 51-607 by Secs. 4, 7, Ch. 380, L. 1977; R.C.M. 1947, 51-604(4), 51-607; amd. Sec. 2, Ch. 431, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 229, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (4) relating to administrative enforcement and penalties.

Cross-References

Costs, Title 25, ch. 10.

When exemplary damages allowed, 27-1-221.

Measure of damages, Title 27, ch. 1, part 3.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-4-211. Repealed. Sec. 4, Ch. 431, L. 1981.

History: En. Sec. 2, Ch. 557, L. 1979.

61-4-212 through 61-4-220 reserved.

61-4-221. Manufacturer's representative's license plates. (1) As used in 61-4-221 through 61-4-223, "manufacturer's representative" means a resident of Montana who is an employee of a motor vehicle manufacturer licensed under the provisions of 61-4-202 and whose responsibility includes coordinating and promoting sales efforts with the manufacturer's dealers.

(2) Subject to the provisions of 61-4-221 through 61-4-223 and notwithstanding the provisions of Title 61, chapter 3, a manufacturer's representative who qualifies as provided in subsection (1) may display manufacturer's license plates on a motor vehicle used solely for business purposes.

(3) To qualify for the issuance and use of manufacturer's license plates by its manufacturer's representatives, the manufacturer licensed under 61-4-202 shall apply on forms and in a manner prescribed by the department and pay the fees provided for in 61-4-222.

History: En. Sec. 1, Ch. 404, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

61-4-222. Fees. Upon making the application required under 61-4-221, the manufacturer shall pay to the department a fee of $250, which entitles the manufacturer to one set of number plates, and an additional fee of $20 for each additional set of number plates. The manufacturer may receive one set of number plates for each manufacturer's representative.

History: En. Sec. 2, Ch. 404, L. 1989.

Cross-References

Department of Justice — disposition of fees, 61-3-108.

61-4-223. Assignment of numbers. (1) Upon the licensing of a manufacturer under 61-4-202, the department shall assign to the manufacturer a distinctive serial number and, after payment of fees provided for in 61-4-222, furnish every qualified manufacturer's representative of that manufacturer with one set of number plates. Assigned number plates must be similar to number plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned to the manufacturer, the letters "MFG".

(2) The department shall cause to be placed on each set of license plates issued to a manufacturer a serial number assigned to the manufacturer and the actual number of license plates issued to the manufacturer. The department shall provide nonremovable stickers bearing the appropriate county designation. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(3) A manufacturer's representative who qualifies as provided in 61-4-221(1) may display manufacturer's license plates on a motor vehicle held for bona fide sale or used solely in the conduct of the manufacturer's business and operated by or under the control of the manufacturer's representative.

(4) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a sheriff or any other law enforcement officer, that a manufacturer has been improperly licensed, has used the manufacturer's license other than as authorized in this section, or is not qualified as a manufacturer under the requirements of this part, the department may revoke the manufacturer's license.

History: En. Sec. 3, Ch. 404, L. 1989.

Part 3

Transportation of Vehicles

Part Cross-References

New motor vehicles towed into state to be labeled, 61-4-113.

61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods. (1) A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, where the vehicles being driven, towed, or transported by the saddle-mount, towbar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of $100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(2) The permitholder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permitholder, and the plates or devices may be used on a vehicle being driven,

towed, or transported by and under the control of the permitholder. That department shall collect the additional sum of $1 for each pair of transit plates or devices applied for and issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965; amd. Sec. 121, Ch. 316, L. 1974; R.C.M. 1947, 32-3401.

Cross-References

Special mobile equipment — identification plate, 61-3-431.

Brakes required on all wheels — exceptions, 61-9-304.

61-4-302. One-trip fee in addition to permit and plate fees payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the department of justice a one-trip fee of $5 per driven vehicle. The fee shall be paid within 15 days after the end of the calendar quarter upon forms recommended or supplied by that department.

History: En. Sec. 6-402, Ch. 197, L. 1965; amd. Sec. 122, Ch. 316, L. 1974; R.C.M. 1947, 32-3402.

61-4-303. Disposition of funds collected. The department of justice shall retain 5% of the funds collected in payment of the trip fees to defray costs of administration. The remaining 95% shall be transferred, on or before the 15th day of each month after collection, to the credit of the department of transportation.

History: En. Sec. 6-403, Ch. 197, L. 1965; amd. Sec. 123, Ch. 316, L. 1974; amd. Sec. 2, Ch. 286, L. 1977; R.C.M. 1947, 32-3403; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Fund structure, 17-2-102.

61-4-304. Fees provided for to be in addition to fees now payable under chapter 12, Title 69. The fees provided for driveaway or towaway transportation are in addition to any fees payable by for-hire carriers under the provisions of chapter 12, Title 69.

History: En. Sec. 6-404, Ch. 197, L. 1965; R.C.M. 1947, 32-3404.

61-4-305. Driveaway or towaway fees in lieu of other fees payable — election to pay other fees. The fees provided for driveaway or towaway transporters are in consideration of the right to use the highways of the state and except as provided in 61-4-304 are in lieu of all other fees including those which might be payable under the provisions of part 2 of chapter 10. However, any operator may elect to pay the fees payable under the provisions of that part.

History: En. Sec. 6-405, Ch. 197, L. 1965; R.C.M. 1947, 32-3405; amd. Sec. 51, Ch. 421, L. 1979.

61-4-306. Exemptions from fees. The fees provided for driveaway or towaway transporters shall not apply to:

(1) vehicles regularly used in the hauling of vehicles by the truckaway method or to the vehicles so transported;

(2) vehicles operated under dealers' licenses or plates;

(3) vehicles registerable under any other provisions of law;

(4) any person not issued a driveaway or towaway permit.

History: En. Sec. 6-406, Ch. 197, L. 1965; R.C.M. 1947, 32-3406.

61-4-307. Display of plates. A vehicle or combination of vehicles transported over the highways of the state by a permitholder shall display in a prominent position thereon the distinctive transit plates or devices, the towing vehicle displaying such on the front thereof and a towed vehicle on the rear thereof.

History: En. Sec. 3, Ch. 133, L. 1953; Sec. 53-632, R.C.M. 1947; amd. and redes. 32-3407 by Sec. 185, Ch. 316, L. 1974; R.C.M. 1947, 32-3407.

61-4-308. List of holders of permits and transit plates. The department of justice shall furnish the department of transportation a list of the permitholders and of the transit plates or devices issued to those permitholders.

History: En. Sec. 4, Ch. 133, L. 1953; Sec. 53-633, R.C.M. 1947; amd. and redes. 32-3408 by Sec. 186, Ch. 316, L. 1974; R.C.M. 1947, 32-3408; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Special mobile equipment — identification plate, 61-3-431.

61-4-309. Definition. (1) "Mobile home", for the purposes of 61-4-310, means a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways and exceeds 25 feet in length, exclusive of trailer hitch.

(2) For the purpose of 61-4-310, a mobile home shall be considered unladen when all items are removed except the equipment originally installed by the manufacturer and personal effects of owners.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974; R.C.M. 1947, 53-119.1(part).

Cross-References

"Occupied structure" defined, 45-2-101.

"Housetrailer" defined, 61-1-501.

61-4-310. Single movement permit — fee — limitation — county treasurer to issue. (1) A vehicle, subject to license under this title, may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit therefor in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title, upon application presented to him in such form as shall be provided by the department and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor of a fee of $5. Such permit shall not be in lieu of fees and permits required under 61-4-301 and 61-4-302.

(2) Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle as defined in part 5, chapter 10, Title 75, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965; amd. Sec. 2, Ch. 18, L. 1974; R.C.M. 1947, 53-119.1(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of County Treasurer, 7-6-2111.

Certificate of ownership, 61-3-202.

61-4-311. Fees credited to general road fund. All fees collected under 61-4-310 shall belong to the general road fund of the county and be for the use and benefit of that fund.

History: En. Sec. 2, Ch. 182, L. 1955; R.C.M. 1947, 53-119.2.

Cross-References

City and county road funds, 7-14-2512.

Part 4

Monopolies in Financing Sale of Motor Vehicles

Part Cross-References

Unfair competition in sales, 30-14-207.

61-4-401. Declaration of policy. It is hereby declared to be the policy of this state that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles.

History: En. Sec. 1, Ch. 144, L. 1937; R.C.M. 1947, 51-201.

Cross-References

U.C.C. — sales, Title 30, ch. 2.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Retail installment sales — finance charge limitation, 31-1-241.

61-4-402. Definitions. (1) "Finance company" or "finance agency" shall mean any person, firm, association, corporation, or other organization engaged in the business of buying, selling, assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.

(2) The term "manufacturer" shall mean any person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(3) The terms "sell", "sold", "buy", and "purchase" as used in this part, include exchange, barter, gift, and offer or contract to sell or buy.

(4) The term "wholesale distributor" shall mean any person, firm, association, corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers.

History: En. Sec. 2, Ch. 144, L. 1937; R.C.M. 1947, 51-202(b) thru (d), (f).

Cross-References

Retail installment sales — "sales finance company" defined, 31-1-202.

"Manufacturer" defined, 61-1-316.

Licensing of new motor vehicle manufacturers, distributors, and importers, Title 61, ch. 4, part 2.

61-4-403. Certain financing agreements prohibited. It is unlawful for any manufacturer or wholesale distributor of motor vehicles to sell or enter into a contract for the sale of motor vehicles to any motor vehicle dealer on the condition or under an agreement, expressed or implied, that the dealer will finance the purchase or sale of any motor vehicle or vehicles only through a designated finance company or finance agency. Any such condition, agreement, or understanding is against the public policy of the state, and such condition, agreement, or understanding is unlawful, void, and unenforceable, either at law or equity.

History: En. Sec. 3, Ch. 144, L. 1937; R.C.M. 1947, 51-203; amd. Sec. 52, Ch. 421, L. 1979.

Cross-References

Contracts in restraint of trade generally void, 28-2-703.

Unlawful restraint of trade, 30-14-205.

61-4-404. Threats prima facie evidence. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer, or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer, that such manufacturer will cease to sell or will terminate or refuse to enter into a contract to sell motor vehicles to such dealer unless such dealer finances the purchase or sale of any such motor vehicle or vehicles only with or through a designated person, shall be presumed to be made at the direction of and with the authority of such manufacturer and shall be prima facie evidence of the fact that such manufacturer has sold or intends to sell such motor vehicle or vehicles on the condition or under the agreement prohibited by the provisions of this part.

History: En. Sec. 4, Ch. 144, L. 1937; R.C.M. 1947, 51-204.

Cross-References

Evidence, Title 26.

When apparent consent not free, 28-2-401.

61-4-405. Penalty. Any person who shall violate any of the provisions of this part and any employee, agent, or officer of any such person who shall participate in any manner in making, enforcing, or performing or in aiding or abetting in the performance of any such contract, condition, agreement, or understanding shall be deemed guilty of a crime and upon conviction thereof shall be punished for each offense by a fine of not more than $5,000 or by imprisonment in the penitentiary for not more than 5 years or in the county jail for not more than 1 year or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 144, L. 1937; R.C.M. 1947, 51-205.

Cross-References

Classification of offenses, 45-1-201.

"Felony" defined, 45-2-101.

61-4-406. Suit for injury to business or property. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership by reason of anything forbidden or declared to be unlawful by this part may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found or any agent resides or is found or where service may be obtained, without respect to the amount in controversy, and recover twofold the damages by him sustained and the costs of suit. Whenever it shall appear to the court before which any proceedings under this part may be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

History: En. Sec. 6, Ch. 144, L. 1937; R.C.M. 1947, 51-206.

Cross-References

Costs, Title 25, ch. 10.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

When exemplary damages allowed, 27-1-221.

Part 5

New Motor Vehicle Warranties — Remedies

Part Cross-References

U.C.C. — sales — warranty provisions, 30-2-312 through 30-2-318.

Seller's responsibilities, Title 30, ch. 11, part 2.

"Consumer Protection Act", Title 30, ch. 14, part 1.

61-4-501. Definitions. For purposes of this part, the following definitions apply:

(1) "Collateral charge" means all governmental charges, including but not limited to sales tax, property tax, license and registration fees, and fees in lieu of tax.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle that has not been brought into nonconformity as the result of abuse, neglect, or unauthorized modifications or alterations by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions.

(3) "Incidental damage" means incidental and consequential damage as defined in 30-2-715.

(4) "Manufacturer" has the meaning applied to that word in 61-4-201.

(5) "Motor vehicle" means a vehicle, including the nonresidential portion of a motor home as defined in 61-1-130, propelled by its own power, designed primarily to transport persons or property upon the public highways, and sold in this state. The term does not include a truck with 10,000 pounds or more gross vehicle weight rating or a motorcycle as defined in 61-1-105. Motor vehicle does not include components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for residential purposes.

(6) "Reasonable allowance for use" is an amount directly attributable to use of the motor vehicle by the consumer and any previous consumers prior to the first written notice of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity. The reasonable allowance for use shall be computed by multiplying the total contract price of the vehicle by a fraction having as its denominator 100,000 and having as its numerator the number of miles that the vehicle traveled prior to the manufacturer's acceptance of its return.

(7) "Warranty period" means the period ending 2 years after the date of the original delivery to the consumer of a new motor vehicle or during the first 18,000 miles of operation, whichever is earlier.

History: En. Sec. 1, Ch. 144, L. 1983; amd. Sec. 1, Ch. 744, L. 1985; amd. Sec. 2, Ch. 300, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definition of manufacturer; and near beginning of definition of motor vehicle, after "vehicle", inserted "including the nonresidential portion of a motor home as defined in 61-1-130", in second sentence deleted reference to a motorhome, and at end inserted sentence creating residential purpose exception.

61-4-502. Notice — warranty enforceable after warranty period — when. (1) If a consumer notifies in writing the manufacturer or its agent during the warranty period that a new motor vehicle does not conform to all applicable express warranties, the repairs necessary to conform the new motor vehicle to the express warranties shall be made by or at the expense of the warrantor, regardless of the expiration of the warranty period after notification of nonconformity is given by the consumer.

(2) The warranty period of an express warranty is extended to equal the time that repair services are not available because of war or invasion or because of strike or fire, flood, or other natural disaster. The presumption provided herein may not apply against a manufacturer who has not received prior written notification from or on behalf of the consumer and has not had an opportunity to cure the alleged defect.

(3) The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owner's manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle. The manufacturer must include with the warranty or owner's manual the name and address where the written notification must be sent.

History: **(1)En. Sec. 2, Ch. 144, L. 1983; (2)En. Sec. 5, Ch. 144, L. 1983; amd. Sec. 2, Ch. 744, L. 1985.**

Cross-References

Construction of terms of notice, 1-4-108.

Agency, Title 28, ch. 10.

61-4-503. Replacement for nonconformity to warranty. (1) If after a reasonable number of attempts the manufacturer or its agent or authorized dealer is unable, during the warranty period, to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value or safety of the motor vehicle to the consumer, the manufacturer shall replace it with a new motor vehicle of the same model and style and of equal value, unless for reasons of lack of availability such replacement is impossible, in which case the manufacturer shall replace it with a vehicle of comparable market value.

(2) As an alternative to replacement, the manufacturer may accept return of the new motor vehicle from the consumer upon refund to him of the full purchase price, plus reasonable collateral charges and incidental damages, less a reasonable allowance for the consumer's use of the motor vehicle. The refund shall be paid to the consumer and to a lienholder, if any, in proportion to their interests.

History: **En. Sec. 3, Ch. 144, L. 1983; amd. Sec. 3, Ch. 744, L. 1985.**

Cross-References

Security interests, Title 30, ch. 9.

Liens, Title 71, ch. 3.

61-4-504. Reasonable number of attempts — presumption. A reasonable number of attempts to conform a new motor vehicle to the applicable express warranties is presumed to have been made for purposes of 61-4-503(1) if:

(1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agent or authorized dealer during the warranty period but the nonconformity continues to exist; or

(2) the vehicle is out of service because of nonconformity for a cumulative total of 30 or more business days during the warranty period after notification of the manufacturer, agent, or dealer.

History: **En. Sec. 4, Ch. 144, L. 1983.**

Cross-References

Presumptions, Title 26, ch. 1, part 6.

61-4-505. Dealer exemption — liability to manufacturer. (1) Nothing in this part imposes any liability on a dealer or creates a cause of action by a consumer against a dealer under 61-4-503.

(2) A dealer is not liable to a manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that repairs made by the dealer were carried out in a manner inconsistent with the manufacturer's instructions.

History: **En. Sec. 8, Ch. 144, L. 1983; amd. Sec. 4, Ch. 744, L. 1985.**

61-4-506. Provisions nonexclusive — applicability of U.C.C. — defenses. (1) The provisions of this part do not limit the rights or remedies available to a consumer under any other law.

(2) All express warranties arising from the sale of a new motor vehicle are subject to the provisions of Title 30, chapter 2, part 3.

(3) It is an affirmative defense to a claim brought under this part that an alleged nonconformity does not substantially impair the use, market value, or safety of the vehicle or that the nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of a motor vehicle by the consumer.

History: En. Sec. 6, Ch. 144, L. 1983; amd. Sec. 5, Ch. 744, L. 1985.

61-4-507. Exhaustion of remedies under federal law. The provisions of 61-4-503 are not applicable against a manufacturer who has established an informal dispute settlement procedure certified by the department of commerce to be in substantial compliance with the provisions of Title 16, Code of Federal Regulations, part 703, as those provisions read on October 1, 1983, unless the consumer has first resorted to that procedure without satisfaction.

History: En. Sec. 7, Ch. 144, L. 1983; amd. Sec. 6, Ch. 744, L. 1985.

61-4-508 through 61-4-510 reserved.

61-4-511. Manufacturer's dispute settlement procedure — certification — prohibited contents. (1) A manufacturer who has established an informal dispute settlement procedure under the provisions of Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, shall submit a copy of the procedure to the department of commerce. The department of commerce shall issue a certificate of approval to a manufacturer whose procedure complies in all respects with such federal regulations and subsection (2). The department of commerce shall report to the department of justice all manufacturer's procedures certified. The department of commerce may issue subpoenas requiring the attendance of witnesses and the production of records, documents, or other evidence necessary to it in an investigation related to the certification of a manufacturer's informal dispute settlement procedure.

(2) A manufacturer's informal dispute settlement procedure must afford the consumer or his representative an opportunity to appear and present evidence in Montana at a location reasonably convenient to the consumer and, further, may not include any practices that:

(a) delay a decision in any dispute beyond 60 days after the date on which the consumer initially resorts to the dispute settlement procedure;

(b) delay performance of remedies awarded in a settlement beyond 10 days after a decision, except that a manufacturer may have 30 days following the date of decision to replace a motor vehicle or make refund to the consumer as provided in 61-4-503;

(c) require the consumer to make the vehicle available for inspection by a manufacturer's representative more than once;

(d) fail to consider in decisions any remedies provided by this part; or

(e) require the consumer to take any action or assume any obligation not specifically authorized under the federal regulations referred to in subsection (1).

History: En. Sec. 7, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

61-4-512. Annual audit — revocation or suspension of certification. (1) A manufacturer establishing an informal dispute resolution procedure shall file with the department of commerce a copy of the annual audit required under Title 16, Code of Federal Regulations, part 703 (16 CFR, part 703), as those provisions read on October 1, 1983, along with any additional information the department of commerce may require, including the number of refunds and replacements made by the manufacturer during the period audited.

(2) The department of commerce may, after notice and hearing as provided in Title 2, chapter 4, suspend or revoke the certification of a manufacturer's informal dispute resolution procedure upon a finding that the procedure is being used to create hardship to consumers. The department of commerce shall notify the department of justice of any revocation or suspension of a certification. The department of justice may consider the revocation or suspension in licensing manufacturers under Title 61, chapter 4, part 2.

History: En. Sec. 8, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-513 and 61-4-514 reserved.

61-4-515. Arbitration procedure. (1) The department of commerce shall provide an independent forum and arbitration procedure for the settlement of disputes between consumers and manufacturers of motor vehicles that do not conform to all applicable warranties under the provisions of this part. The procedure must conform to Title 27, chapter 5. All arbitration shall take place in Montana at a place reasonably convenient to the consumer.

(2) Except as provided in 61-4-520, a consumer owning a motor vehicle that fails to conform to all applicable warranties may bring a grievance before an arbitration panel only if the manufacturer of the motor vehicle has not established an informal dispute settlement procedure which has been certified by the department of commerce under 61-4-511.

History: En. Sec. 10, Ch. 744, L. 1985; amd. Sec. 23, Ch. 744, L. 1985.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

61-4-516. Composition of arbitration panel. An arbitration panel hearing a grievance under this part must consist of three members. One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties. The department of commerce may maintain a list of persons willing to serve on panels from which the third member may be chosen.

History: En. Sec. 11, Ch. 744, L. 1985.

61-4-517. Implementation of arbitration. (1) A consumer may initiate a request for arbitration by filing a notice with the department of commerce. The consumer shall file, on a form prescribed by the department of commerce, any information considered relevant to the resolution of the dispute and shall return the form, along with a $50 filing fee, within 5 days after receiving it. The complaint form must offer the consumer the choice of presenting any subsequent testimony orally or in writing, but not both.

(2) The department of commerce shall determine whether the complaint alleges the violation of any applicable warranty under this part. If the department of commerce determines that a complaint does not allege a warranty violation, it must refund the filing fee.

(3) Upon acceptance of a complaint, the department of commerce shall notify the manufacturer of the filing of a request for arbitration and shall obtain from the manufacturer, on a form prescribed by the department of commerce, any information considered relevant to the resolution of the dispute. The manufacturer must return the form within 15 days of receipt, with a filing fee of $250.

(4) Fees collected under this section shall be deposited in a special revenue fund for the use of the department of commerce in administering this part.

(5) The manufacturer's fee provided in subsection (3) is due only if the department of commerce arbitration procedures are utilized.

History: En. Sec. 12, Ch. 744, L. 1985.

61-4-518. Arbitration — role of department of commerce — expert. (1) The department of commerce shall investigate, gather, and organize all information necessary for a fair and timely decision in each dispute. The department of commerce may, on behalf of the arbitration panel, issue subpoenas to compel the attendance of witnesses and the production of documents, papers, and records relevant to the dispute.

(2) If requested by the panel, the department of commerce may forward a copy of all written testimony and documentary evidence to an independent technical expert certified by the national institute of automotive excellence. The expert may review the material and be available to advise and consult with the panel. The expert may sit as a nonvoting member of the panel whenever oral testimony is presented. The department of justice may suggest an expert at the request of the department of commerce.

History: En. Sec. 13, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-519. Action by arbitration panel — decision. (1) The arbitration panel shall, as expeditiously as possible, but not later than 60 days after the department of commerce has accepted a complaint, render a fair decision based on the information gathered and disclose its findings and its reasoning to the parties.

(2) The decision shall provide appropriate remedies, including but not limited to:

(a) repair of the vehicle;

(b) replacement of the vehicle with an identical vehicle or a comparable vehicle acceptable to the consumer;

(c) refund as provided in 61-4-503(2);

(d) any other remedies available under the applicable warranties or 15 U.S.C. 2301 through 2312, as in effect on October 1, 1983; or

(e) reimbursement of expenses and costs to the prevailing party.

(3) The decision shall specify a date for performance and completion of all awarded remedies. The department of commerce shall contact the prevailing party within 10 working days after the date for performance to determine whether performance has occurred. The parties shall act in good faith in abiding by any decision. In addition, if the decision is not accepted, the parties shall follow the provisions of Title 27, chapter 5. If it is determined by the court that the appellant has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the respondent his costs and reasonable attorney fees.

History: En. Sec. 14, Ch. 744, L. 1985; amd. Sec. 23, Ch. 744, L. 1985.

61-4-520. Nonconforming procedure — arbitration de novo. A consumer injured by the operation of any procedure that does not conform with procedures established by a manufacturer pursuant to 61-4-511 and the provisions of Title 16, Code of Federal Regulations, part 703, as in effect on October 1, 1983, may appeal any decision rendered as the result of such a procedure by requesting arbitration de novo of the dispute by a department of commerce panel. Filing procedures and fees for appeals must be the same as those required in 61-4-515 through 61-4-517. The findings of the manufacturer's informal dispute settlement procedure are admissible in evidence at the department of commerce arbitration panel hearing and in any civil action arising out of any warranty obligation or matter related to the dispute.

History: En. Sec. 16, Ch. 744, L. 1985.

61-4-521 through 61-4-524 reserved.

61-4-525. Notice on resale of replaced vehicle. A motor vehicle which is returned to the manufacturer and which requires replacement or refund may not be sold in the state without a clear and conspicuous written disclosure of the fact that the vehicle was returned. The department of justice may prescribe by rule the form and content of the disclosure statement and a procedure by which the disclosure may be removed upon a determination that the vehicle is no longer defective.

History: En. Sec. 9, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-526. Records of disputes. The department of commerce shall maintain records of each dispute as it determines, including an index of disputes by brand name and model. The department of commerce shall, at intervals of no more than 6 months, compile and maintain statistics indicating the record of compliance with arbitration decisions and the number of refunds or replacements awarded. A copy of the statistical summary must be filed with the department of justice and must be considered by it in determining the issuance of any manufacturer license required under Title 61, chapter 4, part 2.

History: En. Sec. 15, Ch. 744, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

61-4-527 through 61-4-530 reserved.

61-4-531. Nondelegable. The liabilities and obligations contained in this part may not be delegated or assigned to or assumed by any other person or entity.
History: En. Sec. 17, Ch. 744, L. 1985.

61-4-532. Rulemaking. The department of commerce may adopt rules to implement the provisions of this part.
History: En. Sec. 18, Ch. 744, L. 1985.

61-4-533. Penalty. A violation of any provision of this part is an unfair or deceptive trade practice under Title 30, chapter 14, part 2, and the penalties provided in 30-14-224(1) apply.
History: En. Sec. 19, Ch. 744, L. 1985.

CHAPTER 5

DRIVERS' LICENSES

Part 1 — Licensing Provisions

61-5-101. Driver licensing responsibilities of the department.
61-5-102. Drivers to be licensed.
61-5-103. Residency requirement.
61-5-104. Exemptions.
61-5-105. Who may not be licensed.
61-5-106. Instruction and traffic education permits and temporary licenses.
61-5-107. Application for license, instruction permit, commercial vehicle operator's endorsement, or motorcycle endorsement.
61-5-108. Application of minors — imputed liability.
61-5-109. Release from liability.
61-5-110. Examination of applicants.
61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements.
61-5-112. Classification of commercial vehicle operator's endorsements.
61-5-113. Restricted licenses.
61-5-114. Duplicate licenses.
61-5-115. Notice of change of address or name.
61-5-116. License to be carried and exhibited on demand.
61-5-117. Rulemaking authority.
61-5-118 through 61-5-120 reserved.
61-5-121. Disposition of fees.
61-5-122 through 61-5-124 reserved.
61-5-125. Authority of department.
61-5-126. Providing information to selective service system.

Part 2 — Revocation, Suspension, or Cancellation of Licenses

61-5-201. Authority of department to cancel license and endorsement.
61-5-202. Cancellation of license upon death of person signing minor's application.
61-5-203. Suspending privileges of nonresidents.
61-5-204. Suspending resident's license upon conviction in another state.

61-5-205. Mandatory revocation of license upon proper authority.
61-5-206. Authority of department to suspend license or driving privilege or issue probationary license.
61-5-207. Reexamination or investigation — when required.
61-5-208. Period of suspension or revocation.
61-5-209. Surrender and return of license or endorsement upon suspension or revocation.
61-5-210. No operation under foreign license during suspension or revocation in this state.
61-5-211. Right of appeal to court.
61-5-212. Driving while license suspended or revoked — penalty.
61-5-213. Conviction defined.
61-5-214. Mandatory suspension for failure to appear or pay fine.
61-5-215. Provisional licenses prohibited — reinstatement fee.
61-5-216. Reinstatement of license.
61-5-217. Suspending privileges of persons under age eighteen.

Part 3 — Miscellaneous Provisions

61-5-301. Indication on driver's license of intent to make anatomical gift.
61-5-302. Unlawful use of license or identification card.
61-5-303. Making false affidavit — penalty.
61-5-304. Permitting unauthorized minor to drive.
61-5-305. Employing driver without endorsement.
61-5-306. Renting motor vehicle to another.
61-5-307. Penalty for misdemeanor.
61-5-308. Uniformity of interpretation.
61-5-309. Unlawful issuance of license or identification card.

Part 4 — Driver License Compact

61-5-401. Driver License Compact.
61-5-402. Department as licensing authority — information and documents to be furnished.
61-5-403. Reimbursement of compact administrator.
61-5-404. Governor as executive head.
61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction.
61-5-406. Review of administrative actions.

Chapter Cross-References

Driver's license defined, 61-1-136.

Part 1

Licensing Provisions

61-5-101. Driver licensing responsibilities of the department. The department shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver license services as required by this part.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969; R.C.M. 1947, 31-117; amd. Sec. 53, Ch. 421, L. 1979; amd. Sec. 1, Ch. 451, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Continuity of government, Art. III, sec. 2, Mont. Const.

Duties of Department of Justice — records, 61-3-101.

61-5-102. Drivers to be licensed. (1) No person, except those expressly exempted under 61-5-104, shall drive any motor vehicle upon a highway in this state unless such person has a valid Montana driver's license. No person shall receive a Montana driver's license unless and until he surrenders to the department all valid driver's licenses in his possession issued to him by any other jurisdiction. All surrendered licenses shall be returned by the department to the issuing department together with information that the licensee is now licensed in this state. No person shall be permitted to have more than one valid driver's license at any time.

(2) Whenever a city or town requires a licensed driver to obtain a local driving license or permit, such a license or permit shall not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter.

(3) A person operating a bicycle defined in 61-1-123(2) shall have in his possession at all times when operating the bicycle a valid Montana driver's license.

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(a) thru (c); (4)En. Sec. 9, Ch. 508, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 443, L. 1987.

Cross-References

Municipal regulation of motor vehicles, 7-14-4103.

General licensing power of municipalities, 7-21-4101.

61-5-103. Residency requirement. (1) Any person who has resided in Montana for more than 90 days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must thereafter be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if he has resided in Montana for more than 30 days and must thereafter be licensed under the laws of Montana before operating any commercial motor vehicle."

History: En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(d); amd. Sec. 54, Ch. 421, L. 1979; amd. Sec. 9, Ch. 378, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

Commercial motor vehicle defined, 61-1-134.

61-5-104. Exemptions. (1) The following persons are exempt from license under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of such a person who holds a valid license issued by another state and who is not employed in Montana except as a member of the armed forces; if a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed as required by 61-5-102 within 90 days of becoming so employed;

(c) a person on active duty in the armed forces of the United States who has in his immediate possession a valid license issued in a foreign country by the armed forces of the United States, for a period of 45 days from the date of his return to the United States;

(d) a person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(2) A nonresident who is at least 15 years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country may operate a motor vehicle in this state only as an operator.

(3) A nonresident who is at least 18 years of age and who has in his immediate possession a valid commercial operator's license issued to him in his home state or country may operate a motor vehicle or commercial motor vehicle in this state subject to the age limits applicable to commercial vehicle operators in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle so operated is duly registered in the home state or country of such nonresident.

(5) A driver's license issued under this chapter to any person who enters the United States armed forces, if valid and in force and effect at the time the person enters the service, continues in full force and effect so long as the service continues unless the license is sooner suspended, revoked, or canceled for a cause as provided by law, and for not to exceed 30 days following the date on which holder of the driver's license is honorably separated from the service. During the 30-day period, the license is valid only when in the immediate possession of the licensee while driving and the licensee has his discharge, separation, leave, or furlough papers in his immediate possession.

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969; R.C.M. 1947, 31-126; amd. Sec. 1, Ch. 454, L. 1985; amd. Sec. 6, Ch. 443, L. 1987; amd. Sec. 1, Ch. 536, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(e) concerning persons engaged in operation of a train or locomotive not being required to display driver's license to law enforcement officer; and made minor changes in style. Amendment effective April 22, 1991.

Cross-References

Servicemen, servicewomen, and veterans, Art. II, sec. 35, Mont. Const.

"Farm tractor" defined, 61-1-109.

"Road tractor" defined, 61-1-110.

"Implement of husbandry" defined, 61-1-121.

61-5-105. Who may not be licensed. The department shall not issue any license hereunder to any person:

(1) who is under the age of 16 years, with these exceptions:

(a) The department may issue a driver's license to a person who is 15 years of age if he has passed a driver's education course approved by the department and the superintendent of public instruction.

(b) The department may issue a restricted license to any person who is at least 13 years of age;

(2) whose license has been suspended during the suspension, or to any person whose license has been revoked, except as provided in 61-5-208;

(3) who is an habitual drunkard, or is addicted to the use of narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination, unless the person shall have successfully passed such examination;

(6) who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(7) who is suffering from any form of epileptic type seizures or similar disorders characterized by lapse of consciousness or control, either temporary or prolonged, which is or may become chronic; provided that the department may in its discretion issue a license to a person suffering from epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician.

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973; R.C.M. 1947, 31-127; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 443, L. 1987.

Cross-References

Confidentiality of tax records, 15-30-303.

Traffic education, Title 20, ch. 7, part 5.

Report to Department of Justice by physician, 37-2-311.

"Suspension" defined, 61-1-503.

"Revocation" defined, 61-1-504.

Financial responsibility, Title 61, ch. 6, part 1.

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

61-5-106. Instruction and traffic education permits and temporary licenses. (1) Any person satisfying the age requirements specified in 61-5-105(1) may apply to the department for an instruction permit. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of 6 months when accompanied by a licensed driver who is occupying a seat beside the driver. In addition, the department may issue such an instruction permit to any person who is at least 14 ½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction. Any instruction permit so issued shall be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times and/or areas.

(2) The department upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department even though the applicant has not reached the legal age to be eligible for a driver's license. Such permit shall entitle the permittee when he has such a permit in his immediate possession to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle or quadricycle only when under the immediate and proximate supervision of an approved instructor.

(3) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting him to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to such applicant's right to receive a driver's license. Such permit must be in his immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

(4) The department may in its discretion issue a temporary commercial vehicle operator's endorsement to an applicant for such an endorsement permitting him to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial vehicle operator's endorsement. Such temporary endorsement must be in his immediate possession while operating a commercial motor vehicle and is invalid when the applicant's endorsement has been issued or for good cause has been refused.

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974; R.C.M. 1947, 31-129; amd. Sec. 1, Ch. 173, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 30, Ch. 516, L. 1985; amd. Sec. 8, Ch. 443, L. 1987.

Cross-References

Traffic education, Title 20, ch. 7, part 5.

61-5-107. Application for license, instruction permit, commercial vehicle operator's endorsement, or motorcycle endorsement. (1) Every application for an instruction permit, driver's license, commercial vehicle operator's endorsement, or motorcycle endorsement shall be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Every application shall be accompanied by the proper fee, and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state shall be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Every such application shall state the full name, date of birth, sex, and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation, or refusal.

(3) Whenever application is received from an applicant previously licensed by any other jurisdiction, the department shall request a copy of such applicant's driving record from such previous licensing jurisdiction. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969; R.C.M. 1947, 31-130; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 516, L. 1985; amd. Sec. 9, Ch. 443, L. 1987; amd. Sec. 1, Ch. 406, L. 1991.

Compiler's Comments

1991 Amendment: At end of (1) inserted last two sentences requiring voter registration form to be attached to driver's license application and requiring Department to forward registration form to election administrator.

Cross-References

Commercial vehicle operator's endorsement defined, 61-1-135.

Disposition of fees, 61-3-108.

Driver License Compact, Title 61, ch. 5, part 4.

Headgear required for minor motorcycle riders, 61-9-417.

Records to be kept by Department of Justice, 61-11-102.

61-5-108. Application of minors — imputed liability. (1) The application of any person under the age of 18 years for an instruction permit or driver's license shall be signed and verified before a person authorized to administer oaths or an employee of the department by a parent of the applicant or, if none is available, by some other responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor under the age of 18 years when driving a motor vehicle upon a highway shall be imputed to a person who has signed the application of the minor for a permit or license, which person shall be jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct unless a motor vehicle liability policy, as provided for in chapter 6 of this title, covering the minor is in effect, in which case there is no imputed liability as described in this section.

History: En. Sec. 15, Ch. 267, L. 1947; amd. Sec. 1, Ch. 140, L. 1961; R.C.M. 1947, 31-131; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 10, Ch. 443, L. 1987; amd. Sec. 2, Ch. 419, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near middle after "oaths", inserted "or an employee of the department", substituted "a parent" for "both the father and mother", after "applicant" substituted "or, if none is available" for former language regarding surviving parent, person having custody, or employer, and after "responsible" substituted "adult" for "person"; in (2), near end after "misconduct", inserted reference to liability when a liability policy is in effect for the minor and deleted reference to subsection (3); deleted former (3) excepting a parent or guardian from liability for a minor upon acceptance of proof of deposit of financial responsibility in respect to a vehicle owned or operated by the minor; and made minor changes in style.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Officers who may administer oaths, 1-6-101.

Multiple defendants jointly and severally liable, 27-1-703.

Liability of minor for own torts, 27-1-711.

"Minor" defined, 41-1-101.

Child labor, Title 41, ch. 2, part 1.

Permitting unauthorized minor to drive, 61-5-304.

Responsibility of vehicle users and owners, Title 61, ch. 6.

Guardians of minors, Title 72, ch. 5, part 2.

61-5-109. Release from liability. Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon the department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under this chapter by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

History: En. Sec. 16, Ch. 267, L. 1947; R.C.M. 1947, 31-132; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Cancellation of license upon death of person signing minor's application, 61-5-202.

Mandatory liability protection, Title 61, ch. 6, part 3.

61-5-110. Examination of applicants. (1) The department shall examine every applicant for a driver's license, commercial vehicle operator's endorsement, or motorcycle endorsement, except as otherwise provided in this section. Such examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, his knowledge of the traffic laws of this state, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial vehicle operator's endorsement may include additional items.

(2) Within 90 days of receipt of an application for a commercial vehicle operator's endorsement, the department shall give an examination for endorsement to the applicant in the county where the applicant resides.

(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is exempt from the written examination and actual demonstration of

the operation of a motor vehicle provided for in subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers, any examination required by federal regulations.

History: En. Sec. 18, Ch. 267, L. 1947; amd. Sec. 1, Ch. 408, L. 1975; R.C.M. 1947, 31-134(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 32, Ch. 516, L. 1985; amd. Sec. 11, Ch. 443, L. 1987; amd. Sec. 1, Ch. 297, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) permitting resident to surrender valid out-of-state license for Montana license without taking written or driving tests but retaining eyesight test and any examination required by federal regulations for commercial drivers. Amendment effective April 1, 1991.

Cross-References

Report to Department of Justice by physician, 37-2-311.

Commercial vehicle operator's endorsement defined, 61-1-135.

Department to adopt sign manual, 61-8-202.

61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements. (1) The department has authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant. The license shall contain a full-face photograph of the licensee in the size and form prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. A license is not valid until it is signed by the licensee.

(2) (a) The department shall, when any person applies for renewal of a driver's license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of commercial vehicle operator's endorsements, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 3 months of the expiration of his license.

(3) A license expires on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal the

department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana.

(6) It is unlawful for any person to have in his possession or under his control more than one Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial vehicle operator's endorsement".

(7) Fees for driver's licenses are:

(a) driver's license — $4 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof;

(c) commercial vehicle operator's endorsement:

(i) interstate — $5 per year or fraction thereof;

(ii) intrastate — $3.50 per year or fraction thereof.

(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial vehicle operator's endorsement until the expiration of the license.

(9) The holder of a chauffeur's license may convert his chauffeur's license to a commercial vehicle operator's endorsement by paying the appropriate fee covering the remainder of the life of his license and complying with the requirements established by the department.

(10) The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial vehicle operator's endorsement may do so upon paying the appropriate fees and complying with the requirements established by the department.

History: (1) thru (6)En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975; Sec. 31-135, R.C.M. 1947; (7)En. Sec. 13, Ch. 199, L. 1943; Sec. 31-113, R.C.M. 1947; R.C.M. 1947, 31-113, 31-135(part); amd. Sec. 1, Ch. 361, L. 1979; amd. Sec. 55, Ch. 421, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1985; amd. Sec. 1, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 516, L. 1985; amd. Sec. 12, Ch. 443, L. 1987; amd. Sec. 10, Ch. 378, L. 1989; amd. Sec. 1, Ch. 726, L. 1991.

Compiler's Comments

1991 Amendment: In (7) increased driver's license fee from $3 to $4, interstate commercial vehicle operator's endorsement from $3 to $5, and intrastate commercial vehicle operator's endorsement from $1.50 to $3.50. Amendment effective July 1, 1991.

Cross-References

Adult rights — legal drinking age, Art. II, sec. 14, Mont. Const.

Duties of County Treasurer, 7-6-2111.

Agency, Title 28, ch. 10.

Commercial vehicle operator's endorsement defined, 61-1-135.

Disposition of fees — use, 61-3-108, 61-5-121.

61-5-112. Classification of commercial vehicle operator's endorsements. The department upon issuing a license with a commercial vehicle operator's endorsement shall indicate thereon the class of license so issued and shall appropriately examine each applicant according to the class of endorsement applied for and may impose such rules for the classification, examination, and use thereof as it considers necessary for the safety and welfare of the traveling public.

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973; R.C.M. 1947, 31-128; amd. Sec. 56, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 13, Ch. 443, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

School bus driver qualifications, 20-10-103.

"School bus" defined, 61-1-116.

Commercial vehicle operator's endorsement defined, 61-1-135.

Requirements for carriers of persons for reward, 69-11-201.

61-5-113. Restricted licenses. (1) The department upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(2) The department may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(3) The department may upon receiving satisfactory evidence of any violation of the restrictions of such license or endorsement suspend or revoke the same but the licensee shall be entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him.

History: En. Sec. 21, Ch. 267, L. 1947; R.C.M. 1947, 31-137; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 14, Ch. 443, L. 1987.

Cross-References

Administrative procedure — contested cases, Title 2, ch. 4, part 6.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Penalty for misdemeanor, 61-5-307.

61-5-114. Duplicate licenses. In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, the person to whom the same was issued may upon the payment of a fee of $5 obtain a duplicate or substitute thereof, upon furnishing proof satisfactory to the department that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965; R.C.M. 1947, 31-138; amd. Sec. 2, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 15, Ch. 443, L. 1987.

Cross-References

Disposition of fees — use, 61-3-108, 61-5-121.

61-5-115. Notice of change of address or name. Whenever any person after applying for or receiving a driver's license shall move from the address named in such application or in the license issued to him or when the name of a licensee is changed by marriage or otherwise such person shall within 10 days thereafter notify the department in writing of his old and new addresses or of such former and new names and of the number of any license then held by him.

History: En. Sec. 24, Ch. 267, L. 1947; R.C.M. 1947, 31-140; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 443, L. 1987.

Cross-References

Notice — actual and constructive, 1-1-217.

Change of name, Title 27, ch. 31.

Marriage, Title 40, ch. 1.

61-5-116. License to be carried and exhibited on demand. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a driver's license theretofore issued to him and valid at the time of his arrest.

History: En. Sec. 20, Ch. 267, L. 1947; R.C.M. 1947, 31-136; amd. Sec. 4, Ch. 348, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 17, Ch. 443, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Duties of Justices of the Peace, 3-10-221.

Highway Patrol — offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles, 44-1-1003.

"Peace officer" defined, 45-2-101.

Penalty for misdemeanor, 61-5-307.

Mandatory liability protection — proof of compliance, 61-6-302.

Power to inspect vehicle registration, receipts, and other documents, 61-12-205.

61-5-117. Rulemaking authority. The department of justice may adopt rules to implement the issuance and enforcement of classified commercial vehicle operator's endorsements and hazardous materials endorsements.

History: En. Sec. 40, Ch. 443, L. 1987.

61-5-118 through 61-5-120 reserved.

61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) The amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

History: En. Sec. 3, Ch. 277, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 115, Ch. 370, L. 1987; amd. Sec. 18, Ch. 443, L. 1987; amd. Sec. 4, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 275, L. 1989; amd. Sec. 12, Ch. 398, L. 1989; amd. Sec. 2, Ch. 584, L. 1991; amd. Sec. 9, Ch. 701, L. 1991; amd. Sec. 2, Ch. 726, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 584 in (1)(d), near middle after "duplicate driver's license fee", deleted "and the amount of 35% of each motorcycle endorsement fee"; in (1)(e), near middle after "duplicate driver's license fee", deleted "and the amount of 60% of each motorcycle endorsement fee"; inserted (1)(g) concerning depositing 95% of motorcycle endorsement fee into motorcycle safety training account (now state traffic education account, pursuant to sec. 9, Ch. 701, L. 1991, a coordination instruction); and in (2)(a), near end of second sentence, and in (2)(b), near end of first sentence, inserted "the motorcycle safety training account" (now state traffic education account, pursuant to sec. 9, Ch. 701, L. 1991, a coordination instruction) and at end of each subsection inserted reference to 61-5-121(1)(g). Amendment effective July 1, 1991.

Chapter 726 in (1)(a) reduced amount of fee deposited in state special revenue fund from 33 ⅓% to 25%; in (1)(b)(i) reduced amount of fee deposited in county general fund from 5% to 3.75%; in (1)(d) reduced amount of fee deposited in traffic education account from 23 ⅓% to 17.5%; in (1)(e) increased amount of fee deposited in state general fund from 38 1/3% to 53.75%; and in (1)(f) reduced amount of fee deposited in county general fund from 5% to 3.75%. Amendment effective July 1, 1991.

Coordination Instruction: Section 9, Ch. 701, L. 1991, provided: "If House Bill No. 560, including provisions amending 61-5-121 to deposit money in the motorcycle safety training account, is passed and approved, then [section 1 of House Bill No. 560] [amending 61-2-406 (repealed sec. 8, Ch. 701, L. 1991)] is void and the code commissioner shall change "motorcycle safety training account" in 61-5-121, as amended by House Bill No. 560, to "state traffic education account"." House Bill No. 560 was approved April 23, 1991, as Ch. 584, L. 1991, and included amendments to 61-5-121. Therefore, the Code Commissioner has changed the reference to the state traffic education account as indicated in the coordination instruction.

Cross-References

Fund structure, 17-2-102.

Highway patrol retirement pension trust fund, Title 19, ch. 6, part 4.

State's contribution, 19-6-404.

State traffic education account, 20-7-504.

Licenses issued to operators and chauffeurs — renewals and expiration — fees, 61-5-111.

Duplicate license, 61-5-114.

61-5-122 through 61-5-124 reserved.

61-5-125. Authority of department. The department shall administer and enforce the provisions of this chapter and may adopt rules to implement this chapter.

History: En. Sec. 1, Ch. 74, L. 1987.

61-5-126. Providing information to selective service system. At the request of the director of the selective service system, provided for in 50 U.S.C. 460, the department shall provide a list of persons born in specified years who are holders of driver's licenses for the exclusive purpose of assuring compliance with the military draft registration requirements of the federal Military Selective Service Act (50 U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was released to the selective service system. The department may not provide the selective service system the social security or driver's license numbers of persons on the list for any purpose.

History: En. Sec. 2, Ch. 663, L. 1989.

Part 2

Revocation, Suspension, or Cancellation of Licenses

Part Cross-References

Commercial vehicle operator's endorsement defined, 61-1-135.

"Suspension" defined, 61-1-503.

"Revocation" defined, 61-1-504.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

Department of Justice to revoke license of habitual offender, 61-11-211.

61-5-201. Authority of department to cancel license and endorsement. (1) The department is hereby authorized to cancel a driver's license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement upon determining that the licensee was not entitled to the issuance or that since the issuance said licensee has become ineligible (such ineligibility shall be determined pursuant to the provisions of 61-5-105) or that said licensee failed to give the required or correct information in his application or committed any fraud in making such application.

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department.

History: En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973; R.C.M. 1947, 31-142; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 443, L. 1987.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Unsworn falsification to authorities, 45-7-203.

61-5-202. Cancellation of license upon death of person signing minor's application. The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of 18 years.

History: En. Sec. 17, Ch. 267, L. 1947; R.C.M. 1947, 31-133; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

"Minor" defined, 41-1-101.

Release from liability, 61-5-109.

61-5-203. Suspending privileges of nonresidents. The privilege of driving a motor vehicle on the highways of this state given to a nonresident shall be subject to suspension or revocation by the department in like manner and for like causes as a driver's license and commercial vehicle operator's endorsement or just an endorsement issued hereunder may be suspended or revoked.

History: En. Sec. 27, Ch. 267, L. 1947; R.C.M. 1947, 31-143(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 20, Ch. 443, L. 1987.

Cross-References

Residence — rules for determining, 1-1-215.

Driver License Compact, Title 61, ch. 5, part 4.

61-5-204. Suspending resident's license upon conviction in another state. The department is authorized to suspend or revoke the driver's license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another jurisdiction of an offense in that jurisdiction which, if committed in this state, would be grounds for the suspension or revocation of the driver's license or commercial vehicle operator's endorsement.

History: En. Sec. 28, Ch. 267, L. 1947; R.C.M. 1947, 31-144; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 443, L. 1987; amd. Sec. 12, Ch. 378, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

Driver License Compact, Title 61, ch. 5, part 4.

61-5-205. Mandatory revocation of license upon proper authority. The department upon proper authority shall revoke the driver's license, including the commercial vehicle operator's endorsement, or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination thereof, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(7) negligent vehicular assault as defined in 45-5-205.

History: En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969; amd. Sec. 47, Ch. 359, L. 1977; amd. Sec. 2, Ch. 430, L. 1977; R.C.M. 1947, 31-146; amd. Sec. 1, Ch. 698, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 22, Ch. 443, L. 1987; amd. Sec. 2, Ch. 612, L. 1987; amd. Sec. 1, Ch. 335, L. 1989.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

"Felony" defined, 45-2-101.

Negligent homicide, 45-5-104.

Perjury, 45-7-201.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Bail-jumping, 45-7-308.

Bail, Title 46, ch.9.

Effect of conviction on civil rights, 46-18-801.

License reinstatement fee to fund county drinking and driving prevention programs, 61-2-107.

Duty to give information and render aid, 61-7-105.

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

Operation of motor vehicle by person with alcohol concentration of 0.10 or more, 61-8-406.

Penalty for driving while intoxicated, 61-8-714.

Penalty for operation of motor vehicle by person with alcohol concentration of 0.10 or more, 61-8-722.

Report of convictions and suspension or revocation of driver's licenses, 61-11-101.

Department of Justice to revoke license of habitual offender, 61-11-211.

61-5-206. Authority of department to suspend license or driving privilege or issue probationary license. (1) The department is hereby authorized to suspend the driver's license, including the commercial vehicle operator's endorsement, or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has committed or permitted an unlawful or fraudulent use of such license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation;

(g) has falsified his date of birth on his application for a driver's license;

(h) is under 21 years of age and has altered his or another's driver's license or identification card to obtain alcohol; or

(i) has authorized another to use his driver's license or identification card to obtain alcohol.

(2) However, the department may, in its discretion and in lieu of such suspension of license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) hereof. Upon issuance of a probationary license the licensee shall be subject to the restrictions set forth thereon. The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of such probation. The licensee shall surrender to the department all driver licenses theretofore issued to him before such probationary license shall be issued. His refusal or neglect to surrender such licenses upon demand shall be ground for suspending all such licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the department through its duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or probation, or, good cause

appearing therefor, may affirm, reduce, or extend the period of probation or suspension of such license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969; R.C.M. 1947, 31-147; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 244, L. 1987; amd. Sec. 23, Ch. 443, L. 1987; amd. Sec. 1, Ch. 471, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(h) regarding alteration of license or identification card to obtain alcohol; inserted (1)(i) regarding authorizing another to use license or identification card to obtain alcohol; and made minor changes in style.

Cross-References

Notice — actual and constructive, 1-1-217.

Administrative procedure — contested cases, Title 2, ch. 4, part 6.

Unsworn falsification to authorities, 45-7-203.

Bail, Title 46, ch. 9.

Driver License Compact, Title 61, ch. 5, part 4.

Required obedience to traffic laws, 61-8-104.

Obedience to traffic-control devices, 61-8-201.

Reckless driving, 61-8-301.

Careless driving, 61-8-302.

Speed restrictions — basic rule, 61-8-303.

Reckless driving — penalty, 61-8-715.

Careless driving — penalty, 61-8-716.

Records to be kept by Department of Justice, 61-11-102.

Habitual traffic offenders, Title 61, ch. 11, part 2.

"Incapacitated person" defined, 72-5-101.

61-5-207. Reexamination or investigation — when required. The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed or to have a commercial vehicle operator's endorsement, may, based on information received, investigate the licensee's record, physical or mental condition, or need for a license or, upon written notice of at least 5 days to the licensee, require him to submit to an examination. Upon the conclusion of the investigation or examination the department shall take action as may be appropriate considering the facts reported or discovered and may suspend or revoke the license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement of such person or permit him to retain such license or may issue a license subject to restrictions as permitted under 61-5-113. Refusal or neglect of the licensee to submit to such investigation or examination shall be ground for suspension or revocation of his license.

History: En. Sec. 32, Ch. 267, L. 1947; R.C.M. 1947, 31-148; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 24, Ch. 443, L. 1987; amd. Sec. 3, Ch. 419, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "may", inserted "based on information received, investigate the licensee's record, physical or mental condition, or need for a license or", in second sentence, after "conclusion of", inserted "the investigation or" and after "appropriate" inserted "considering the facts reported or discovered", and in third sentence, before "examination", inserted "investigation or"; and made minor changes in style.

Cross-References

Report to Department of Justice by physician, 37-2-311.

"Incapacitated person" defined, 72-5-101.

61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been

suspended or revoked is not entitled to have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

(3) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail.

(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in subsection (2). In addition, the department shall suspend the person's commercial vehicle operator's endorsement in accordance with the provisions of this title.

History: (1) thru (3)En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969; amd. Sec. 4, Ch. 430, L. 1977; Sec. 31-149, R.C.M. 1947; (4)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; R.C.M. 1947, 31-145(d), 31-149; amd. Sec. 57, Ch. 421, L. 1979; amd. Sec. 2, Ch. 698, L. 1983; amd. Sec. 1, Ch. 314, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 25, Ch. 443, L. 1987; amd. Sec. 3, Ch. 612, L. 1987; amd. Sec. 13, Ch. 378, L. 1989; amd. Sec. 1, Ch. 476, L. 1989; amd. Sec. 2, Ch. 563, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end, substituted "otherwise permitted by law" for "permitted under subsection (2) of this section, 61-5-207, 61-5-212, 61-6-123, 61-8-803 through 61-8-805, and 61-11-211"; and inserted (5) providing that a person convicted under 61-8-401 or 61-8-406 while operating a commercial motor vehicle must have his driver's license and commercial motor vehicle endorsement suspended.

Cross-References

Bail, Title 46, ch. 9.

Effect of conviction — civil disabilities, 46-18-801.

Who may not be licensed, 61-5-105.

Accidents involving death or personal injuries, 61-7-103.

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

Operation of motor vehicle by person with alcohol concentration of 0.10 or more, 61-8-406.

Penalty for driving while intoxicated, 61-8-714.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

61-5-209. Surrender and return of license or endorsement upon suspension or revocation. The department upon suspending or revoking a license or commercial vehicle operator's endorsement shall require that such license shall be surrendered to and be retained by the department except that at the end of the period of suspension such license so surrendered shall be returned to the licensee.

History: En. Sec. 34, Ch. 267, L. 1947; R.C.M. 1947, 31-150; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 443, L. 1987.

Cross-References

Surrender of license and registration, 61-6-112.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

61-5-210. No operation under foreign license during suspension or revocation in this state. Any resident or nonresident whose license or right or privilege to operate a motor vehicle or commercial motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle or commercial motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license or commercial vehicle operator's endorsement is obtained when and as permitted under this chapter.

History: En. Sec. 35, Ch. 267, L. 1947; R.C.M. 1947, 31-151; amd. Sec. 27, Ch. 443, L. 1987.

Cross-References

Driver License Compact, Title 61, ch. 5, part 4.

61-5-211. Right of appeal to court. Any person denied a driver's license or commercial motor vehicle operator's endorsement or whose license or endorsement has been canceled, suspended, or revoked by the department except where such cancellation or revocation is mandatory under the provisions of this chapter shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the department, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner is entitled to a license or commercial vehicle operator's endorsement or is subject to suspension, cancellation, or revocation of the license or endorsement under the provisions of this chapter.

History: En. Sec. 36, Ch. 267, L. 1947; R.C.M. 1947, 31-152; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 28, Ch. 443, L. 1987.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Review of administrative actions, 61-5-406.

61-5-212. Driving while license suspended or revoked — penalty. (1) Any person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when his privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's license or commercial vehicle operator's endorsement was suspended or revoked shall extend the period of suspension or revocation for an additional like period.

History: En. Sec. 39, Ch. 267, L. 1947; amd. Sec. 1, Ch. 84, L. 1959; R.C.M. 1947, 31-155; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 29, Ch. 443, L. 1987; amd. Sec. 1, Ch. 30, L. 1989.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Habitual traffic offender operating motor vehicle guilty of misdemeanor, 61-11-213.

61-5-213. Conviction defined. For the purposes of parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 the term "conviction" shall mean a final conviction, except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

History: En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; R.C.M. 1947, 31-145(c); amd. Sec. 1, Ch. 369, L. 1991.

Compiler's Comments

1991 Amendment: At end of first sentence inserted exception clause.

Cross-References

Conditions of bail — violation thereof, Title 46, ch. 9, part 5.

Sentence and judgment, Title 46, ch. 18.

Execution of judgment, Title 46, ch. 19.

61-5-214. Mandatory suspension for failure to appear or pay fine. The department shall suspend the license or driving privilege of an operator immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the operator:

(1) is charged with a violation of 61-5-302 through 61-5-306, 61-5-309, or chapters 3, 6, 7, 8, 9, or 10 of this title or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred; and

(2) (a) failed to post the set bond amount or appear as ordered by the court or appear upon issued summons; or

(b) failed to forfeit the posted bond amount or, when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and

(3) received notice, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee.

History: En. Sec. 1, Ch. 442, L. 1987; amd. Sec. 68, Ch. 83, L. 1989; amd. Sec. 1, Ch. 263, L. 1989.

61-5-215. Provisional licenses prohibited — reinstatement fee. (1) No provisional, restricted, or probationary license may be issued upon a suspension under 61-5-214.

(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of $25 to the court for deposit in the state general fund.

History: En. Sec. 2, Ch. 442, L. 1987.

61-5-216. Reinstatement of license. Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and the reinstatement fee, the department shall immediately reinstate the license, unless the operator otherwise is not entitled to reinstatement.

History: En. Sec. 3, Ch. 442, L. 1987; amd. Sec. 69, Ch. 83, L. 1989.

61-5-217. Suspending privileges of persons under age eighteen. The privilege of driving a motor vehicle on the highways of this state given to a person under the age of 18 is subject to suspension or revocation by the department in like manner and for like causes as an adult.

History: En. Sec. 2, Ch. 484, L. 1987.

Part 3

Miscellaneous Provisions

Part Cross-References

Special parking permits for handicapped, Title 49, ch. 4, part 3.

61-5-301. Indication on driver's license of intent to make anatomical gift. (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document under 72-17-201 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally whether he wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. This

statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license.

History: En. 31-135.1 by Sec. 1, Ch. 28, L. 1977; R.C.M. 1947, 31-135.1; amd. Sec. 2, Ch. 459, L. 1985; amd. Sec. 1, Ch. 204, L. 1987; amd. Sec. 30, Ch. 443, L. 1987; amd. Sec. 2, Ch. 540, L. 1989.

61-5-302. Unlawful use of license or identification card. It is a misdemeanor for any person to:

(1) display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, or altered driver's license or identification card;

(2) lend his driver's license or identification card to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license or identification card not issued to him;

(4) fail or refuse to surrender to the department upon its lawful demand any driver's license or identification card which has been suspended, revoked, or canceled;

(5) use a false or fictitious name in any application for a driver's license, commercial vehicle operator's endorsement, or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application; or

(6) permit any unlawful use of a driver's license or identification card issued to him.

History: En. Sec. 37, Ch. 267, L. 1947; amd. Sec. 1, Ch. 70, L. 1961; R.C.M. 1947, 31-153; amd. Sec. 58, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 443, L. 1987; amd. Sec. 2, Ch. 471, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section inserted "or identification card"; and made minor changes in style.

Cross-References

Kinds of fraud, 28-2-404.

What constitutes actual fraud, 28-2-405.

What constitutes constructive fraud, 28-2-406.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Unsworn falsification to authorities, 45-7-203.

Misdemeanor — no penalty specified, 46-18-212.

61-5-303. Making false affidavit — penalty. Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn to or affirmed is guilty of false swearing and upon conviction shall be punishable as provided by 45-7-202.

History: En. Sec. 38, Ch. 267, L. 1947; R.C.M. 1947, 31-154; amd. Sec. 59, Ch. 421, L. 1979.

61-5-304. Permitting unauthorized minor to drive. No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of parts 1 through 3 of this chapter.

History: En. Sec. 40, Ch. 267, L. 1947; R.C.M. 1947, 31-156.

Cross-References

"Minor" defined, 41-1-101.

Application of minor, 61-5-108.

61-5-305. Employing driver without endorsement. No person shall employ as a commercial vehicle operator any person not then licensed and endorsed as provided by this chapter.

History: En. Sec. 41, Ch. 267, L. 1947; R.C.M. 1947, 31-157; amd. Sec. 32, Ch. 443, L. 1987.

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

61-5-306. Renting motor vehicle to another. (1) No person shall rent a motor vehicle to any other person unless the latter person is then duly licensed hereunder or, in the case of a nonresident, then duly licensed under the laws of the state or country of his residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) No person shall rent a motor vehicle to another until he has inspected the driver's license of the person to whom the vehicle is to be rented and compared and verified the signature thereon with the signature of such person written in his presence.

(3) No person may rent a motor vehicle which is defined as a commercial motor vehicle under this title to another until he has inspected the driver's license of that person and determined that the person has a commercial vehicle operator's endorsement.

(4) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, and the number and expiration date of the license of said latter person. The record shall be open to inspection by any police officer or officer or employee of the department.

History: En. Sec. 42, Ch. 267, L. 1947; R.C.M. 1947, 31-158; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 443, L. 1987.

Cross-References

Residence — rules for determining, 1-1-215.

Failure to return rented or leased personal property, 45-6-309.

61-5-307. Penalty for misdemeanor. (1) It is a misdemeanor for any person to violate any of the provisions of parts 1 through 3 of this chapter and 61-11-101 unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of parts 1 through 3 of this chapter and 61-11-101 shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 43, Ch. 267, L. 1947; R.C.M. 1947, 31-159.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-5-308. Uniformity of interpretation. Parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 44, Ch. 267, L. 1947; R.C.M. 1947, 31-160.

61-5-309. Unlawful issuance of license or identification card. No person may create, publish, or otherwise manufacture a Montana driver's license or a Montana identification card authorized by 61-12-501 or color facsimile thereof or create, manufacture, or possess an engraved plate or other such device for the printing of a Montana driver's license or Montana identification card authorized by 61-12-501 or color facsimile thereof, except as authorized by the department.

History: En. Sec. 1, Ch. 248, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

Penalty, 61-5-307.

Part 4

Driver License Compact

61-5-401. Driver License Compact. This part shall be known and may be cited as the "Driver License Compact".

Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(c) any felony in the commission of which a motor vehicle is used;

(d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;

(2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: **En. Sec. 1, Ch. 154, L. 1963; R.C.M. 1947, 31-163.**

Cross-References

Communication with other states — Governor sole official organ, 2-15-201.

Application for license — previous licensee, 61-5-107.

Suspending privileges of nonresidents, 61-5-203.

Suspending resident's license upon conviction in another state, 61-5-204.

Authority of Department of Justice to suspend license, 61-5-206.

No operation under foreign license during suspension or revocation in this state, 61-5-210.

61-5-402. Department as licensing authority — information and documents to be furnished. As used in the compact, the term "licensing authority" with reference to this state shall mean the department of justice. The department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

History: **En. Sec. 2, Ch. 154, L. 1963; R.C.M. 1947, 31-164; amd. Sec. 1, Ch. 503, L. 1985.**

61-5-403. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: **En. Sec. 3, Ch. 154, L. 1963; R.C.M. 1947, 31-165.**

Cross-References

Travel, meals, and lodging, Title 2, ch. 18, part 5.

61-5-404. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: **En. Sec. 4, Ch. 154, L. 1963; R.C.M. 1947, 31-166.**

61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction. (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d) of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, 45-2-101(21), and 61-7-103, respectively.

(2) In addition to convictions mentioned above the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303); and

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301).

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver's license or driving privilege of the individual as may be required elsewhere in this title.

History: En. Sec. 6, Ch. 154, L. 1963; R.C.M. 1947, 31-168; amd. Sec. 98, Ch. 421, L. 1979; amd. Sec. 8, Ch. 485, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 419, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) requiring forwarding of court abstracts or reports of conviction and disallowing Department action under certain conditions.

Cross-References

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

61-5-406. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the Driver License Compact shall be subject to review pursuant to the provisions of 61-5-211, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963; R.C.M. 1947, 31-169.

CHAPTER 6

RESPONSIBILITY OF VEHICLE USERS AND OWNERS

Part 1 — Financial Responsibility

61-6-101. Short title.
61-6-102. Definitions.
61-6-103. Motor vehicle liability policy defined.
61-6-104. Uniformity of interpretation.
61-6-105. Department to administer law and make rules.
61-6-106. Appeal to court.
61-6-107. Repealed.
61-6-108. Matters not to be evidence in civil suits.
61-6-109. Exceptions.
61-6-110. Other relief not precluded.

61-6-111. Repealed.
61-6-112. Surrender of license.
61-6-113 through 61-6-120 reserved.
61-6-121. Courts to report nonpayment of judgments.
61-6-122. Suspension for nonpayment of judgments — exceptions.
61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension.
61-6-124. Satisfaction of judgments.
61-6-125. Installment payment of judgments — default.
61-6-126 through 61-6-130 reserved.
61-6-131. When proof of financial responsibility required.
61-6-132. Alternate methods of giving proof.
61-6-133. Certificate of insurance as proof.
61-6-134. Certificate furnished by nonresident as proof.
61-6-135. Notice of cancellation or termination of certified policy.
61-6-136. Other policies not affected.
61-6-137. Bond as proof of responsibility.
61-6-138. Money or securities as proof of responsibility.
61-6-139. Owner permitted to give proof for others.
61-6-140. Substitution of proof of responsibility.
61-6-141. Other proof — when required.
61-6-142. Duration of proof — when money or securities may be canceled or returned.
61-6-143. Self-insurers.
61-6-144. Assigned risk plans.
61-6-145 through 61-6-150 reserved.
61-6-151. Violations — penalties.

Part 2 — Liability of Vehicle Owner

61-6-201. Liability of owner for negligence of employee driver.

Part 3 — Mandatory Liability Protection

61-6-301. Required motor vehicle insurance — family member exclusion.
61-6-302. Proof of compliance.
61-6-303. Exempt vehicles.
61-6-304. Penalties.

Chapter Cross-References

Replacement value of motor vehicle, 27-1-306.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Part 1

Financial Responsibility

Part Cross-References

Attorney's fees — motor vehicle claim, 25-10-303.

61-6-101. Short title. This part may be cited as the "Motor Vehicle Safety-Responsibility Act".

History: En. Sec. 41, Ch. 204, L. 1951; R.C.M. 1947, 53-457.

61-6-102. Definitions. The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

(1) "Judgment" means any judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal rendered by a court of competent jurisdiction of any state or of the United States upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) "License" means any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle or the use of a motor vehicle owned by him in this state.

(4) "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance, or use of a motor vehicle.

(5) "State" means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

(6) "Ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel and in common use by the public.

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967; R.C.M. 1947, 53-418(part); amd. Sec. 60, Ch. 421, L. 1979; amd. Sec. 1, Ch. 212, L. 1985.

61-6-103. Motor vehicle liability policy defined. (1) A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(2) The owner's policy of liability insurance must:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(b) insure the person named therein and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to said limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) $10,000 because of injury to or destruction of property of others in any one accident.

(3) An operator's policy of liability insurance must insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to the operator's policy of liability insurance.

(4) A motor vehicle liability policy must state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) A motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of a motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) A motor vehicle liability policy is subject to the following provisions, which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. The policy may not be canceled or annulled as to the liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. No statement made by the insured or on his behalf and no violation of the policy may defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage may not be a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount is deductible from the limits of liability specified in subsection (2)(b).

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of this part constitute the entire contract between the parties.

(7) A motor vehicle policy is not subject to cancellation, termination, nonrenewal, or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator is found to have violated a traffic law or ordinance of the state or a city, is found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(8) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not subject to the provisions of this part. With respect to a policy which grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage which is required by this section.

(9) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this part.

(10) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectable insurance.

(11) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet such requirements.

(12) Any binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for such a policy.

(13) A reduced limits endorsement may not be issued by any company to be attached to any policy issued in compliance with this section.

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1967; amd. Sec. 1, Ch. 177, L. 1973; amd. Sec. 1, Ch. 260, L. 1973; amd. Sec. 1, Ch. 295, L. 1974; amd. Sec. 1, Ch. 526, L. 1975; R.C.M. 1947, 53-438; amd. Sec. 1, Ch. 425, L. 1989.

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Required motor vehicle insurance, 61-6-301.

61-6-104. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 39, Ch. 204, L. 1951; R.C.M. 1947, 53-456.

61-6-105. Department to administer law and make rules. The department shall administer and enforce the provisions of this part and may make rules necessary for its administration and may provide for hearings upon request of persons aggrieved by orders or acts of the department under the provisions of this part.

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957; R.C.M. 1947, 53-419(a), (b); amd. Sec. 61, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-6-106. Appeal to court. (1) At any time within 60 days after the rendition of any decision or order by the department under the provisions of this part, any party in interest may appeal to the district court of the judicial district of the state of Montana, in and for any county wherein any party in interest may reside or in which any party in interest which is a corporation may have its principal office, or place of business, and said appeal may be for the purpose of having the lawfulness of any order, decision, or act of the department inquired into and determined. The court shall determine whether the filing of an appeal shall operate as a stay of any order or decision of the department.

(2) Said appeal shall be taken by serving a written notice of said appeal upon the department, which said service shall be made by delivering a copy of such notice to the department and filing the original thereof with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon all other parties in interest, if there be any, by mailing the same to said parties in interest to such addresses of such parties as such parties shall have left with the department. If such parties shall have left no address with the department, then no service on such parties shall be required. The order of filing and service of said notice is immaterial.

(3) Immediately upon service upon said department of said notice, the department shall certify to said district court a complete record of all proceedings had by it with reference to the decision, order, or act appealed from, together with all official forms or documents in the possession of said department pertaining to said decision, order, or act and all correspondence and other written matter in the possession of said department pertaining to said decision, order, or act, with the clerk of the district court.

(4) Immediately upon the return of such certified matter, the district court shall fix a day for the hearing of said appeal and shall cause notice to be served upon the department and upon the appellant and also upon any other parties in interest upon whom service was required under the provisions of this section. The court may upon the hearing for a good cause shown permit evidence in addition to the matter certified by the department to the court, but in the absence of such permission from the court, the cause shall be heard on the matter certified to the court by the department. The trial of the matter shall be de novo, without a jury, and upon such trial the court shall determine whether or not the department regularly pursued its authority, whether or not the findings of the department ought to be sustained, and whether or not such findings are reasonable under all circumstances of the case. The department and each party in interest shall have the right to appear in the proceeding.

(5) If the court shall find from such trial, as aforesaid, that the findings and conclusions of the department are not in accordance with either the facts or the law or that they ought to be other or different from those made by the department or that any finding and conclusion or any decision, order, act, rule, or requirement of the department is unreasonable, the court shall set aside such finding, conclusion, decision, order, act, rule, or requirement of said department or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order, or judgment that shall be required or shall be legal and proper in the premises. Either the department or the appellant or any other party in interest, if there be any, may appeal to the supreme court from any final order, judgment, or decree of said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the supreme court.

(6) Upon such appeal, the supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises and may stay the operation of any order, judgment, or decree of said district court without requiring any bond or undertaking from the applicant for such stay. When any such cause is so appealed, it shall have precedence upon the calendar of said supreme court upon the record made in said district court and upon the matters certified to or which ought to have been certified by said department to said district court, and judgment and decree shall be entered therein as expeditiously as possible.

History: En. Sec. 2, Ch. 204, L. 1951; amd. Sec. 1, Ch. 164, L. 1957; R.C.M. 1947, 53-419(c); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Administrative procedure — judicial review of contested cases, Title 2, ch. 4, part 7.

Supreme Court jurisdiction, Title 3, ch. 2, part 2.

District Court — appellate jurisdiction, 3-5-303.

Service of process, Title 25, ch. 3; Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Montana Rules of Appellate Procedure, Title 25, ch. 21.

61-6-107. Repealed. Sec. 2, Ch. 467, L. 1989.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965; amd. Sec. 1, Ch. 381, L. 1971; R.C.M. 1947, 53-420; amd. Sec. 1, Ch. 503, L. 1985.

61-6-108. Matters not to be evidence in civil suits. Neither the action taken by the department pursuant to this part nor the findings, if any, of the department upon which such action is based shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

History: En. Sec. 11, Ch. 204, L. 1951; amd. Sec. 1, Ch. 184, L. 1974; R.C.M. 1947, 53-428; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Evidence, Title 26.

Liability for negligence as well as willful acts, 27-1-701.

Comparative negligence, 27-1-702.

61-6-109. Exceptions. This part shall not apply with respect to any motor vehicle owned by the United States, this state, or any political subdivision of this state or any municipality therein; or, except for 61-6-139, with respect to any motor vehicle which is subject to the provisions of 69-12-402, requiring insurance or other security.

History: En. Sec. 33, Ch. 204, L. 1951; amd. Sec. 3, Ch. 184, L. 1974; R.C.M. 1947, 53-450.

Cross-References

Public-owned vehicles exempt from license or registration fees, 61-3-321.

Number plates — publicly owned vehicles, 61-3-332.

61-6-110. Other relief not precluded. Nothing in this part shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

History: En. Sec. 38, Ch. 204, L. 1951; R.C.M. 1947, 53-455.

Cross-References

Civil trials, Title 25, ch. 7.

61-6-111. Repealed. Sec. 9, Ch. 218, L. 1985.
History: En. Sec. 30, Ch. 204, L. 1951; R.C.M. 1947, 53-447.

61-6-112. Surrender of license. Any person whose license shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this part, shall have been canceled or terminated, or who shall neglect to furnish other proof upon request of the department shall immediately return his license to the department. If any person shall fail to return to the department the license as provided herein, the department shall forthwith direct any peace officer or highway patrol officer to secure possession thereof and to return the same to the department.

History: En. Sec. 31, Ch. 204, L. 1951; amd. Sec. 1, Ch. 107, L. 1957; R.C.M. 1947, 53-448; amd. Sec. 1, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Motor vehicle liability insurance — limitations on basis for cancellation, 33-23-211.

Notice required for cancellation — exception — penalty, 33-23-212.

Notice to insured of ground for cancellation, 33-23-213.

Surrender and return of license, 61-5-209.

Report of convictions and suspension or revocation of driver's licenses — surrender of licenses, 61-11-101.

61-6-113 through 61-6-120 reserved.

61-6-121. Courts to report nonpayment of judgments. (1) Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state to forward to the department immediately after the expiration of said 60 days a certified copy of such judgment.

(2) If the defendant named in any certified copy of a judgment reported to the department is a nonresident, the department shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

History: En. Sec. 12, Ch. 204, L. 1951; R.C.M. 1947, 53-429; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Clerk of the District Court — general duties, 3-5-501.

Judgment and subsequent procedure, Title 27, ch. 18, part 9.

61-6-122. Suspension for nonpayment of judgments — exceptions. (1) The department, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in 61-6-125.

(2) If the judgment creditor consents in writing, in such form as the department may prescribe, that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the department, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in

61-6-125, provided the judgment debtor furnishes proof of financial responsibility.

History: En. Sec. 13, Ch. 204, L. 1951; R.C.M. 1947, 53-430; amd. Sec. 2, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Judgment and subsequent procedure, Title 27, ch. 18, part 9.

Debtor and creditor relationships, Title 31, ch. 2.

61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension. Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the person gives proof of financial responsibility subject to the exemptions stated in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered as provided in 25-9-301 and the person has complied with 61-6-301 and 61-6-302.

History: En. Sec. 14, Ch. 204, L. 1951; amd. Sec. 1, Ch. 437, L. 1973; R.C.M. 1947, 53-431; amd. Sec. 5, Ch. 592, L. 1979.

Cross-References

Execution of judgment after 6 years, 25-13-102.

Period of suspension or revocation, 61-5-208.

61-6-124. Satisfaction of judgments. (1) Judgments herein referred to shall, for the purposes of this part only, be considered satisfied:

(a) when $25,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(b) when, subject to the limit of $25,000 because of bodily injury to or death of one person, the sum of $50,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(c) when $5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(2) Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967; R.C.M. 1947, 53-432; amd. Sec. 62, Ch. 421, L. 1979.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Confession of judgment, Title 27, ch. 9, part 1.

Prejudgment attachment, Title 27, ch. 18.

61-6-125. Installment payment of judgments — default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(2) The department shall not suspend a license or a nonresident's operating privilege and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(3) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the department shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this part.

History: En. Sec. 16, Ch. 204, L. 1951; R.C.M. 1947, 53-433; amd. Sec. 3, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Judgments for money, 25-13-201.

Enforcement of order to pay money, 25-13-204.

61-6-126 through 61-6-130 reserved.

61-6-131. When proof of financial responsibility required. (1) Whenever the department under any of the laws of this state revokes the license of any person, such license shall remain revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to such person until permitted under the motor vehicle laws of this state and not then unless and until he shall give and thereafter maintain proof of financial responsibility.

(2) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of a license, no license shall be thereafter issued to such person until he shall give and thereafter maintain proof of financial responsibility.

(3) Whenever the department revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility.

History: En. Sec. 17, Ch. 204, L. 1951; amd. Sec. 1, Ch. 236, L. 1961; R.C.M. 1947, 53-434; amd. Sec. 4, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Conditions of bail — violation thereof, Title 46, ch. 9, part 5.

Effect of conviction, Title 46, ch. 18, part 8.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-6-132. Alternate methods of giving proof. (1) Proof of financial responsibility when required under this part with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(a) a certificate of insurance as provided in 61-6-133 or 61-6-134;

(b) a bond as provided in 61-6-137;

(c) a certificate or deposit of money or securities as provided in 61-6-138; or

(d) a certificate of self-insurance, as provided in 61-6-143, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

(2) No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such proof shall be furnished for such motor vehicle.

History: En. Sec. 18, Ch. 204, L. 1951; R.C.M. 1947, 53-435.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Money, 30-3-107.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-133. Certificate of insurance as proof. Proof of financial responsibility may be furnished by filing with the department the written certificate of any insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

History: En. Sec. 19, Ch. 204, L. 1951; R.C.M. 1947, 53-436; amd. Sec. 5, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-134. Certificate furnished by nonresident as proof. (1) The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the department a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this part, and the department shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(a) Said insurance carrier shall execute a power of attorney authorizing the department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.

(b) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.

(2) If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any said undertaking or agreements, the department shall not thereafter

accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

History: En. Sec. 20, Ch. 204, L. 1951; R.C.M. 1947, 53-437; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-135. Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under 61-6-133 or a policy under 61-6-134, the insurance so certified shall not be canceled or terminated until at least 10 days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the department, except that such a policy subsequently procured and certified shall on the effective date of its certification terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

History: En. Sec. 22, Ch. 204, L. 1951; R.C.M. 1947, 53-439; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor vehicle liability insurance — notice required for cancellation, 33-23-212.

Motor vehicle liability insurance — advance notice required for nonrenewal, 33-23-214.

61-6-136. Other policies not affected. (1) This part shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this state, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this part, may be certified as proof of financial responsibility under this part.

(2) This part shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured.

History: En. Sec. 23, Ch. 204, L. 1951; R.C.M. 1947, 53-440.

Cross-References

Motor vehicle liability policies to include uninsured motorist coverage, 33-23-201.

61-6-137. Bond as proof of responsibility. (1) Proof of financial responsibility may be furnished by filing with the department the bond of a surety company duly authorized to transact business in the state or a bond with at least two individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy and shall not be cancelable except after 10 days' written notice to the department. Upon the filing of notice to this effect by the department in the office of the county clerk and recorder of the county wherein such real estate is located, the bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a judgment against the person who has filed the bond.

(2) The person in whose favor the lien exists may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of any person who has executed such bond. The provisions of the Montana Rules of Civil Procedure, except insofar as they are inconsistent with the provisions of this part, are applicable to and constitute the rules of practice in the foreclosure actions or proceedings. The provisions of the Montana Rules of Civil Procedure relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the actions or proceedings.

History: En. Sec. 24, Ch. 204, L. 1951; R.C.M. 1947, 53-441; amd. Sec. 63, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Suretyship, Title 28, ch. 11, part 4.

Liens, Title 71, ch. 3.

61-6-138. Money or securities as proof of responsibility. (1) Proof of financial responsibility may be evidenced by the certificate of the state treasurer that the person named therein has deposited with him $55,000 in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of $55,000. The state treasurer shall not accept any such deposit and issue a certificate therefor and the department shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(2) Such deposit shall be held by the state treasurer to satisfy, in accordance with the provisions of this part, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution shall arise out of a suit for damages as aforesaid.

History: En. Sec. 25, Ch. 204, L. 1951; R.C.M. 1947, 53-442; amd. Sec. 6, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Ex officio State Treasurer, 2-15-1002.

General fiscal duties of State Treasurer, 17-1-111.

Execution of judgment, Title 25, ch. 13.

Prejudgment attachment, Title 27, ch. 18.

U.C.C. — "security" defined, 30-8-102.

Securities regulation, Title 30, ch. 10.

61-6-139. Owner permitted to give proof for others. Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the department shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The department shall designate the restrictions imposed by this section on the face of such person's license.

History: En. Sec. 26, Ch. 204, L. 1951; R.C.M. 1947, 53-443; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

"Employment" defined, 39-2-101.

Restricted licenses, 61-5-113.

61-6-140. Substitution of proof of responsibility. The department shall consent to the cancellation of any bond or certificate of insurance or the department shall direct and the state treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this part.

History: En. Sec. 27, Ch. 204, L. 1951; R.C.M. 1947, 53-444; amd. Sec. 1, Ch. 503, L. 1985.

61-6-141. Other proof — when required. Whenever any proof of financial responsibility filed under the provisions of this part no longer fulfills the purposes for which required, the department shall for the purpose of this part require other proof as required by this part and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such proof.

History: En. Sec. 28, Ch. 204, L. 1951; R.C.M. 1947, 53-445; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Suspension of licenses, 61-5-203, 61-5-204.

61-6-142. Duration of proof — when money or securities may be canceled or returned. (1) The department shall direct and the state treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this part as proof of financial responsibility, or the department shall waive the requirement of filing proof under this part, in any of the following events:

(a) at any time after 3 years from the date such proof was required when during the 3-year period preceding the request the department has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom such proof was furnished;

(b) in the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(c) in the event the person who has given proof surrenders his license to the department.

(2) However, the department shall not consent to the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has deposited such money or securities has, within 1 year immediately preceding such request been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the

applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the department.

(3) Whenever any person whose proof has been canceled or returned under subsection (1)(c) of this section applies for a license within a period of 3 years from the date proof was originally required, any such application shall be refused unless the applicant complies with the insurance or bond requirements under 61-6-301 and 61-6-302.

History: En. Sec. 29, Ch. 204, L. 1951; R.C.M. 1947, 53-446; amd. Sec. 6, Ch. 592, L. 1979; amd. Sec. 7, Ch. 218, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

61-6-143. Self-insurers. (1) Any person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in subsection (2) of this section.

(2) The department may, in its discretion, upon the application of such a person, issue a certificate of self-insurance when it is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(3) Upon not less than 5 days' notice and a hearing pursuant to such notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

History: En. Sec. 34, Ch. 204, L. 1951; R.C.M. 1947, 53-451; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Contested cases — notice, 2-4-601.

61-6-144. Assigned risk plans. After consultation with insurance companies authorized to issue automobile liability policies in this state, the commissioner of insurance shall approve a reasonable plan or plans for the equitable apportionment among such companies of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. Any applicant for any such policy, any person insured under any such plan, and any insurance company affected, may appeal to the commissioner of insurance from any ruling or decision of the manager or committee designated to operate such plan. Any person aggrieved hereunder by any order or act of the commissioner of insurance may, within 10 days after notice thereof, file a petition in the district court of Lewis and Clark County for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree.

History: En. Sec. 35, Ch. 204, L. 1951; R.C.M. 1947, 53-452.

Cross-References

Administrative procedure — judicial review of contested cases, Title 2, ch. 4, part 7.

District Court jurisdiction, Title 3, ch. 5, part 3.

Insurance Commissioner and Department — general powers and duties, Title 33, ch. 1, part 3.

"Residual market mechanism" defined, 33-19-104.

61-6-145 through 61-6-150 reserved.

61-6-151. Violations — penalties. (1) Any person who shall forge or, without authority, sign any evidence of proof of financial responsibility or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority shall be fined not more than $1,000 or imprisoned for not more than 1 year or both.

(2) Any person whose license or nonresident's operating privilege has been suspended or revoked under this part and who, during such suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle owned by such person to be operated by another upon any highway, except as permitted under this part, shall be fined not more than $500 or imprisoned not exceeding 6 months or both.

(3) Any person willfully failing to return a license as required in 61-6-112 shall be fined not more than $500 or imprisoned not to exceed 30 days or both.

(4) Any person who shall violate any provision of this part for which no penalty is otherwise provided shall be fined not more than $500 or imprisoned not more than 90 days or both.

History: (1) thru (3)En. Sec. 32, Ch. 204, L. 1951; amd. Sec. 2, Ch. 184, L. 1974; Sec. 53-449, R.C.M. 1947; (4)En. Sec. 43, Ch. 204, L. 1951; Sec. 53-458, R.C.M. 1947; R.C.M. 1947, 53-449, 53-458; amd. Sec. 8, Ch. 218, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

"Felony" and "misdemeanor" defined, 45-2-101.

Part 2

Liability of Vehicle Owner

Part Cross-References

Liability, Title 27, ch. 1, part 7.

61-6-201. Liability of owner for negligence of employee driver. The owner of every vehicle running or traveling upon any highway or road for the conveyance of passengers is liable for all damage to person or property done by any person in his employment as a driver while driving such vehicle, whether done willfully or negligently or otherwise, in the same manner as such driver would be liable.

History: En. Sec. 5, Ch. 8, Ch. 72, L. 1913; re-en. Sec. 5, Ch. 8, Ch. 141, L. 1915; re-en. Sec. 1748, R.C.M. 1921; Cal. Pol. C. Sec. 2936; re-en. Sec. 1748, R.C.M. 1935; R.C.M. 1947, 32-1112.

Cross-References

Agency, Title 28, ch. 10.

"Employment" defined, 39-2-101.

General liability arising from employment relationship, Title 39, ch. 2, part 7.

Carriers of passengers, Title 69, ch. 11, part 2.

Part 3

Mandatory Liability Protection

Part Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-6-301. Required motor vehicle insurance — family member exclusion. (1) (a) Except as provided in subsection (1)(b), an owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond must guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered must be paid within 30 days after final judgment is entered establishing the liability. The indemnity bond must guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and must cover the period for which the motor vehicle is to be registered and operated. The bond must be on a form approved by the commissioner of insurance and must be with a surety company authorized to do business in the state.

History: En. Sec. 1, Ch. 592, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 425, L. 1989.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Insurance Commissioner — general powers and duties, 33-1-311.

Light vehicle reregistration by mail, 61-3-535.

Suspension to continue until judgments paid and proof given, 61-6-123.

Duration of proof — when money or securities may be canceled or returned, 61-6-142.

61-6-302. Proof of compliance. (1) Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the department. The department may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.

(2) An applicant for registration of a motor vehicle who wishes to register the vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.

(3) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

(4) Every person shall carry in a motor vehicle being operated by him an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, no person charged with violating this subsection may be convicted if he produces in court or the office of the arresting officer proof of insurance valid at the time of his arrest.

History: En. Sec. 2, Ch. 592, L. 1979; amd. Sec. 1, Ch. 409, L. 1981; amd. Sec. 36, Ch. 614, L. 1981; amd. Sec. 5, Ch. 348, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 35, Ch. 611, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Duties of County Treasurer, 7-6-2111.

Notice required for cancellation — motor vehicle liability insurance, 33-23-212.

Application for registration, 61-3-303.

License to be carried and exhibited on demand, 61-5-116.

Suspension to continue until judgments paid and proof given, 61-6-123.

Duration of proof — when money or securities may be canceled or returned, 61-6-142.

61-6-303. Exempt vehicles. The following vehicles and their drivers are exempt from the provisions of 61-6-301:

(1) a vehicle owned by the United States government or any state or political subdivision;

(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the department upon such terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy;

(3) a vehicle owned by a self-insurer certified as provided in 61-6-143;

(4) an implement of husbandry or special mobile equipment that is only incidentally operated on a highway or property open to use by the public;

(5) a vehicle operated upon a highway only for the purpose of crossing such highway from one property to another;

(6) a commercial vehicle registered or proportionally registered in this and any other jurisdiction, provided that vehicle is covered by a motor vehicle liability insurance policy complying with the laws of another jurisdiction in which it is registered;

(7) a motorcycle or quadricycle;

(8) a vehicle moved solely by human or animal power;

(9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and he is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction.

History: En. Sec. 3, Ch. 592, L. 1979; amd. Sec. 2, Ch. 212, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 34, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.

"Bicycle" defined, 61-1-123.

"Quadricycle" defined, 61-1-133.

Public-owned vehicles exempt from registration, 61-3-321.

Special mobile equipment — exemption from registration, 61-3-431.

Proportional registration of fleet vehicles, 61-3-721.

61-6-304. Penalties. It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless such person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303. A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable by a fine of not less than $250 and not to exceed $500 or by imprisonment in the county jail for not more than 10 days, or both.

History: En. Sec. 4, Ch. 592, L. 1979; amd. Sec. 2, Ch. 409, L. 1981; amd. Sec. 178, Ch. 575, L. 1981; amd. Sec. 3, Ch. 212, L. 1985; amd. Sec. 1, Ch. 440, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 155, L. 1987.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

"Ways of this state open to the public" defined, 61-6-102.

CHAPTER 7

ACCIDENTS AND ACCIDENT REPORTS

Part 1 — Uniform Accident Reporting Act

61-7-101. Short title.
61-7-102. Application.
61-7-103. Accidents involving death or personal injuries.
61-7-104. Accident involving damage to vehicle.
61-7-105. Duty to give information and render aid.
61-7-106. Duty upon striking unattended vehicle.
61-7-107. Duty upon striking fixtures or other property upon a highway.
61-7-108. Immediate notice of accidents.

61-7-109. Written reports of accidents — additional information — form of report.
61-7-110. When driver unable to report.
61-7-111. Accident report forms.
61-7-112. Coroners and medical examiners to report.
61-7-113. Garages to report.
61-7-114. Accident reports confidential.
61-7-115. Department to tabulate and analyze accident reports.
61-7-116. Any incorporated city permitted to require accident reports.
61-7-117. Uniformity of interpretation.
61-7-118. Penalty for violation.

Part 1

Uniform Accident Reporting Act

61-7-101. Short title. This part will be cited as the "Uniform Accident Reporting Act".

History: En. Sec. 18, Ch. 210, L. 1939; R.C.M. 1947, 32-1217.

61-7-102. Application. The provisions of this part shall apply upon highways and elsewhere throughout the state.

History: En. Sec. 22, Ch. 263, L. 1955; R.C.M. 1947, 32-2124(part).

Cross-References

Highway code, Title 60, ch. 1.

"Highway" defined, 61-1-201.

61-7-103. Accidents involving death or personal injuries. (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of 61-7-105. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or to comply with said requirements under such circumstances shall upon conviction be punished by imprisonment for not less than 30 days or more than 1 year or by a fine of not less than $100 or more than $5,000 or by both such fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of any person so convicted for the period prescribed in 61-5-208.

History: En. Sec. 3, Ch. 210, L. 1939; Subd. (c) amd. Sec. 1, Ch. 212, L. 1947; amd. Sec. 2, Ch. 256, L. 1959; R.C.M. 1947, 32-1202; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Homicide, Title 45, ch. 5, part 1.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

61-7-104. Accident involving damage to vehicle. (1) The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of 61-7-105. Every such stop shall be made without obstructing traffic more than is necessary.

(2) Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 210, L. 1939; R.C.M. 1947, 32-1203.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-7-105. Duty to give information and render aid. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address, and the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

History: En. Sec. 5, Ch. 210, L. 1939; R.C.M. 1947, 32-1204; amd. Sec. 34, Ch. 443, L. 1987.

Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Jurisdiction of highway patrol officers, Title 44, ch. 1, part 10.

Certificates of registration, 61-3-322.

License to be carried and exhibited on demand, 61-5-116.

"Habitual traffic offender" defined, 61-11-203.

61-7-106. Duty upon striking unattended vehicle. The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

History: En. Sec. 6, Ch. 210, L. 1939; R.C.M. 1947, 32-1205.

61-7-107. Duty upon striking fixtures or other property upon a highway. The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license and shall make report of such accident when and as required in 61-7-109.

History: En. Sec. 7, Ch. 210, L. 1939; amd. Sec. 3, Ch. 256, L. 1959; R.C.M. 1947, 32-1206; amd. Sec. 35, Ch. 443, L. 1987.

61-7-108. Immediate notice of accidents. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of $250 or more shall immediately by the quickest means of communication give notice of such accident to the local police department if such accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol.

History: En. Sec. 8, Ch. 210, L. 1939; amd. Sec. 4, Ch. 256, L. 1959; R.C.M. 1947, 32-1207; amd. Sec. 1, Ch. 59, L. 1987.

Cross-References

Duties of Sheriff, 7-32-2121.

Municipal police force, Title 7, ch. 32, part 41.

Highway Patrol jurisdiction, Title 44, ch. 1, part 10.

61-7-109. Written reports of accidents — additional information — form of report. (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of $400 is sustained shall, within 10 days after such accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

(2) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which any person is killed or injured or in which damage to the property of any person exceeds $400, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

(4) The form of the accident report required under this section shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in chapter 6 of this title.

(5) A report required by subsection (1) or (2) may not be used as evidence in any trial, civil or criminal, arising out of an accident.

History: En. Sec. 9, Ch. 210, L. 1939; amd. Sec. 5, Ch. 256, L. 1959; amd. Sec. 1, Ch. 52, L. 1971; R.C.M. 1947, 32-1208; amd. Sec. 64, Ch. 421, L. 1979; amd. Sec. 1, Ch. 299, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 59, L. 1987; amd. Sec. 70, Ch. 83, L. 1989; amd. Sec. 1, Ch. 486, L. 1989.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Accidents involving snowmobiles, 23-2-635.

State law enforcement, Title 44.

Records and reports of convictions, Title 61, ch. 11.

61-7-110. When driver unable to report. (1) An accident report is not required under this part from any person who is physically incapable of making such report during the period of such incapacity.

(2) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in 61-7-108, and there was another occupant in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.

(3) Whenever the driver is physically incapable of making a written report of an accident as required in 61-7-109, and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall within 10 days after learning of such accident, make such report not made by the driver.

(4) Any person who gives information in reports as required in 61-7-109 or in this section, knowing or having reason to believe that such information is false, shall be fined not more than $500 or imprisonment for not more than 6 months or both.

History: En. Sec. 10, Ch. 210, L. 1939; amd. Sec. 6, Ch. 256, L. 1959; R.C.M. 1947, 32-1209.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-7-111. Accident report forms. (1) The department shall prepare and, upon request, supply to police departments, coroners, medical examiners, sheriffs, garages, and other suitable agencies or individuals forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required therein unless not available.

(3) The department may suspend the license or permit to drive of any resident or the nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed.

History: En. Sec. 11, Ch. 210, L. 1939; amd. Sec. 7, Ch. 256, L. 1959; R.C.M. 1947, 32-1210; amd. Sec. 31, Ch. 7, L. 1979; amd. Sec. 2, Ch. 299, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Suspension of licenses, 61-5-203, 61-5-204.

Records to be kept by Department of Justice, 61-11-102.

61-7-112. Coroners and medical examiners to report. Each coroner, medical examiner, or other official performing like functions shall, on or before the 10th day of each month, report in writing to the department the deaths of all persons within his respective jurisdiction during the preceding calendar month as the result of traffic accidents, giving the time and place of each accident and the circumstances relating thereto.

History: En. Sec. 12, Ch. 210, L. 1939; amd. Sec. 8, Ch. 256, L. 1959; R.C.M. 1947, 32-1211; amd. Sec. 32, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Vital statistics — death, Title 50, ch. 15, part 4.

Cadavers and autopsies, Title 50, ch. 21, part 1.

Records to be kept by Department of Justice, 61-11-102.

61-7-113. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet or involved in an accident of which report must be made as provided in 61-7-109 shall report to the department within 24 hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

History: En. Sec. 13, Ch. 210, L. 1939; R.C.M. 1947, 32-1212; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Weapons, Title 45, ch. 8, part 3.

Certificate of ownership — contents, 61-3-202.

Certificates of registration, 61-3-322.

Records to be kept by Department of Justice, 61-11-102.

61-7-114. Accident reports confidential. (1) All required accident reports and supplemental reports shall be without prejudice to the individual reporting and shall be for the confidential use of the department or other state agencies having use for the records for accident prevention purposes or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted. The report and supplemental information filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by any person named in the report or reports or by any driver, passenger, or pedestrian involved in the accident or by his representative designated in writing, by a party to a civil action arising from the accident, or if the person is deceased, by his executor or administrator or by the attorney representing his executor or administrator.

History: En. Sec. 14, Ch. 210, L. 1939; amd. Sec. 9, Ch. 256, L. 1959; amd. Sec. 1, Ch. 142, L. 1973; R.C.M. 1947, 32-1213; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 486, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Evidence, Title 26.

When proof of financial responsibility required, 61-6-131.

Records to be kept by Department of Justice, 61-11-102.

Personal representative — powers and duties, Title 72, ch. 3, part 6.

61-7-115. Department to tabulate and analyze accident reports. The department shall tabulate and may analyze all accident reports and shall publish annually or at more frequent intervals statistical information based thereon as to the number and circumstances of traffic accidents.

History: En. Sec. 15, Ch. 210, L. 1939; R.C.M. 1947, 32-1214; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Duties of Department of Justice — records, 61-3-101.

Records and reports of convictions, Title 61, ch. 11.

61-7-116. Any incorporated city permitted to require accident reports. Any incorporated city, town, village, or other municipality may by ordinance require that the driver of a vehicle involved in an accident shall also file with a designated city department a report of such accident or a copy of any report herein required to be filed with the department of justice. All such reports shall be for the confidential use of the city department and subject to the provisions of 61-7-114.

History: En. Sec. 16, Ch. 210, L. 1939; R.C.M. 1947, 32-1215; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Municipalities — powers, 7-1-4124.

Public records, 7-1-4144.

Organization and incorporation of new municipalities, Title 7, ch. 2, part 41.

61-7-117. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 17, Ch. 210, L. 1939; R.C.M. 1947, 32-1216.

61-7-118. Penalty for violation. (1) A person violating any provision of 61-7-104 through 61-7-110 or 61-7-112 through 61-7-114 is guilty of a misdemeanor. Upon a first conviction, the offender shall be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the offender shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year of the first conviction, an offender shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(2) Subject to the limitations of 46-18-231(3), an offender who fails to pay a fine shall be imprisoned in the county jail in the county in which the offense was committed, and the punishment shall be commuted at the rate of 1 day's incarceration for each $10 of the fine.

History: En. Sec. 3, Ch. 299, L. 1983.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

CHAPTER 8

TRAFFIC REGULATION

Part 1 — General Provisions

61-8-101. Application — exceptions.
61-8-102. Uniformity of interpretation.
61-8-103. Provisions uniform throughout state — power of local authorities.
61-8-104. Required obedience to traffic laws.
61-8-105. Obedience to police officers and highway patrol officers.
61-8-106. Responsibility of public officers and employees.
61-8-107. Police vehicles and authorized emergency vehicles.
61-8-108. Traffic laws applicable to persons driving animal-drawn vehicles.
61-8-109. Rights of owners of real property not affected — when.
61-8-110. Forest development road, special service road defined.
61-8-111. State laws applicable on forest development roads — enforcement.
61-8-112. Special service roads not subject to state law enforcement — when.

Part 2 — Traffic-Control Devices

61-8-201. Obedience to traffic-control devices — exception for emergency vehicles and funeral processions.
61-8-202. Department of transportation to adopt sign manual.
61-8-203. Department of transportation to sign all state highways.
61-8-204. Reward for information on injury to or removal of sign or marker.
61-8-205. Posting of penalties along highways.
61-8-206. Local traffic-control devices.
61-8-207. Traffic-control signal legend.
61-8-208. Pedestrian control signals.
61-8-209. Flashing signals.
61-8-210. Display of unauthorized signs, signals, or markings.

Part 3 — Vehicle Operating Requirements

61-8-301. Reckless driving.
61-8-302. Careless driving.
61-8-303. Speed restrictions — basic rule.
61-8-304. Fuel conservation speed limit — exception to the basic rule.
61-8-305. Applicability of conservation speed limit.
61-8-306. Lower speed limits.
61-8-307. Existing statutes not affected.
61-8-308. Permission of authorities to hold speed contest.
61-8-309. Establishment of special speed zones.
61-8-310. When local authorities may and shall alter limits.
61-8-311. Minimum speed regulations.
61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers.
61-8-313. Special speed limitations.
61-8-314 through 61-8-320 reserved.
61-8-321. Drive on right side of roadway — exceptions.
61-8-322. Passing vehicles proceeding in opposite directions.
61-8-323. Overtaking a vehicle on the left.
61-8-324. When overtaking on right is permitted.
61-8-325. Limitations on overtaking on the left.
61-8-326. No-passing zones.
61-8-327. One-way roadways and rotary traffic islands.
61-8-328. Driving on roadways laned for traffic.
61-8-329. Following too closely.

61-8-330. Driving on divided highways.
61-8-331. Restricted and controlled access.
61-8-332. Restrictions on use of controlled-access roadway.
61-8-333. Required position and method of turning at intersections — bicycle turn procedures — signs.
61-8-334. Turning on curve or crest of grade prohibited.
61-8-335. Starting parked vehicle.
61-8-336. Turning movements and required signals.
61-8-337. Signals by hand and arm or signal device.
61-8-338. Method of giving hand-and-arm signals.
61-8-339. Vehicle approaching or entering intersection.
61-8-340. Vehicle turning left at intersection.
61-8-341. Vehicle entering through highway or stop intersection.
61-8-342. Vehicles approaching "Yield" sign.
61-8-343. Vehicle entering highway from private road, driveway, or public approach ramp.
61-8-344. Vehicles to stop at stop signs.
61-8-345. Stop before emerging from alley, driveway, or building.
61-8-346. Operation of vehicles on approach of police vehicles or authorized emergency vehicles.
61-8-347. Obedience to signal indicating approach of train.
61-8-348. All vehicles to stop at certain railroad grade crossings.
61-8-349. Certain vehicles to stop at all railroad grade crossings.
61-8-350. Moving heavy equipment at railroad grade crossings.
61-8-351. Meeting or passing school bus — identification of violator — penalty.
61-8-352. Prohibited operation of special lighting equipment on school buses.
61-8-353. Stopping, standing, or parking outside of business or residence districts.
61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions.
61-8-355. Additional parking regulations.
61-8-356. Prohibition against parking or leaving vehicles on public property.
61-8-357. Unattended motor vehicles.
61-8-358. Limitations on backing.
61-8-359. Riding on motorcycles.
61-8-360. Obstruction to driver's view or driving mechanism.
61-8-361. Driving on mountain highways.
61-8-362. Coasting prohibited.
61-8-363. Following fire apparatus prohibited.
61-8-364. Crossing firehose.
61-8-365. Putting refuse on highway prohibited.
61-8-366. Riding on fenders or running boards prohibited.
61-8-367. Riding in housetrailers.
61-8-368. Opening and closing vehicle doors.
61-8-369. Shooting from or across road or highway right-of-way.
61-8-370. Securing of load — requirement.
61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions.
61-8-372 through 61-8-379 reserved.
61-8-380. Funeral procession right-of-way — funeral lead vehicle and funeral escort vehicle in funeral procession.
61-8-381. Equipment required for funeral vehicle — restricted light use.
61-8-382. Driving in funeral procession.
61-8-383. Vehicles not in funeral procession.
61-8-384. Liability.

Part 4 — Driving Under Influence of Alcohol or Drugs

61-8-401. Persons under the influence of alcohol or drugs.
61-8-402. Blood, breath, or urine tests.
61-8-403. Right of appeal to court.
61-8-404. Evidence admissible — conditions of admissibility.
61-8-405. Administration of tests.
61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more.

61-8-407. Definition of alcohol concentration.
61-8-408. Multiple convictions prohibited.

Part 5 — Pedestrian Traffic

61-8-501. Pedestrians subject to traffic regulations.
61-8-502. Pedestrians' right-of-way in crosswalk.
61-8-503. Crossing at other than crosswalks.
61-8-504. Drivers to exercise due care.
61-8-505. Pedestrians to use right half of crosswalk.
61-8-506. Pedestrians on roadways.
61-8-507. Pedestrian soliciting rides or business.
61-8-508. Intoxicated pedestrian.
61-8-509. Pedestrian's right-of-way on sidewalks.

Part 6 — Bicycle Traffic

61-8-601. Effect of regulations.
61-8-602. Traffic laws applicable to persons operating bicycles.
61-8-603. Riding on bicycles.
61-8-604. Clinging to vehicles.
61-8-605. Riding on roadways.
61-8-606. Carrying articles.
61-8-607. Lamps and other equipment on bicycles.
61-8-608. Bicycles on sidewalks.
61-8-609. Bicycle racing — when lawful.

Part 7 — Enforcement—Penalties

61-8-701. Charging violations.
61-8-702. Use of radar — evidence admissible.
61-8-703. Arrest without a warrant in radar cases.
61-8-704. Erection of signs.
61-8-705. Officers or highway patrol officers authorized to remove illegally stopped vehicles.
61-8-706. Removal of unauthorized sign.
61-8-707 through 61-8-710 reserved.
61-8-711. Violation of chapter — penalty.
61-8-712. Penalty for erection of unauthorized sign.
61-8-713. Injury to or removal of sign or marker a misdemeanor — penalty.
61-8-714. Penalty for driving under influence of alcohol or drugs.
61-8-715. Reckless driving — penalty.
61-8-716. Careless driving — penalty.
61-8-717. Penalty for unauthorized drag racing.
61-8-718. Penalty for violation of fuel conservation speed limit.
61-8-719. Penalty for leaving vehicle on public property.
61-8-720. Penalty.
61-8-721. Repealed.
61-8-722. Penalty for driving with excessive alcohol concentration.
61-8-723. Offenses committed by persons under the age of eighteen.

Part 8 — Commercial Motor Vehicle Safety

61-8-801. Purpose.
61-8-802. Suspension of commercial vehicle operator's endorsement — disqualification.
61-8-803. Suspension of commercial vehicle operator's endorsement — serious traffic violations.
61-8-804. Suspension of commercial vehicle operator's endorsement — felony involving a controlled substance while driving a commercial vehicle.
61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or more — hearing.
61-8-806. Blood, breath, or urine tests of commercial vehicle operators — procedure — suspension.
61-8-807. Administration of tests.
61-8-808. Right of appeal of court.

61-8-809. Leaving the scene of an accident involving commercial motor vehicle — suspension.
61-8-810. Suspension of commercial vehicle operator's endorsement — felony involving a commercial motor vehicle.
61-8-811. Suspension of commercial vehicle operator's endorsement — duration — second or subsequent offense.

Chapter Cross-References

Parking citations within capitol complex, 2-17-113.

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Special parking permits for handicapped, 49-4-301 through 49-4-306.

Part 1

General Provisions

61-8-101. Application — exceptions. (1) As used in this chapter, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public.

(2) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401(1)(b), (1)(c), and (2), with regard to operating a vehicle while under the influence of drugs, apply anywhere within this state;

(c) the provisions of 61-8-301 and 61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, and 61-8-402 through 61-8-405, with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public.

(3) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

History: (1)En. Sec. 22, Ch. 263, L. 1955; Sec. 32-2124, R.C.M. 1947; (2)En. Sec. 4, Ch. 247, L. 1959; Sec. 32-2124.1, R.C.M. 1947; R.C.M. 1947, 32-2124(part), 32-2124.1; amd. Sec. 65, Ch. 421, L. 1979; amd. Sec. 1, Ch. 659, L. 1983; amd. Sec. 3, Ch. 698, L. 1983.

Cross-References

Highway code, Title 60, ch. 1.

Flagmen escorts — livestock on highways, 60-7-204.

"Highway" defined, 61-1-201.

Definition of "alcohol concentration", 61-8-407.

61-8-102. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955; R.C.M. 1947, 32-21-158.

61-8-103. Provisions uniform throughout state — power of local authorities. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

History: En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957; R.C.M. 1947, 32-2130.

Cross-References

Counties — promulgation and enforcement of rules, 7-5-2102.

Municipal ordinances, Title 7, ch. 5, part 42.

Local traffic-control devices, 61-8-206.

When local authorities may and shall alter limits, 61-8-310.

When local authorities may restrict right to use roadway, 61-10-128.

Powers of local authorities to regulate traffic, 61-12-101.

61-8-104. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor punishable as provided in 61-8-711 for any person to do any act forbidden or fail to perform any act required in this chapter.

History: En. Sec. 23, Ch. 263, L. 1955; R.C.M. 1947, 32-2125; amd. Sec. 1, Ch. 40, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "misdemeanor", inserted "punishable as provided in 61-8-711".

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Violation of 61-8-304 not a misdemeanor, 61-8-718.

61-8-105. Obedience to police officers and highway patrol officers. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or highway patrol officer pertaining to the use of the highways by traffic.

History: En. Sec. 24, Ch. 263, L. 1955; R.C.M. 1947, 32-2126; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Sheriff's Department, Title 7, ch. 32, part 21.

Municipal police force, Title 7, ch. 32, part 41.

Jurisdiction of Highway Patrol, Title 44, ch. 1, part 10.

Obstructing a peace officer, 45-7-302.

Obstructing justice, 45-7-303.

Failure to aid a peace officer, 45-7-304.

Obedience to police officers and highway patrol officers, 61-9-105.

61-8-106. Responsibility of public officers and employees. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(2) Unless specifically made applicable, the provisions of this chapter except those contained in part 5 of chapter 8 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: En. Sec. 25, Ch. 263, L. 1955; R.C.M. 1947, 32-2127.

Cross-References

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

"Authorized emergency vehicles" defined, 61-1-119.

61-8-107. Police vehicles and authorized emergency vehicles. (1) The driver of a police vehicle or authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(2) The driver of a police vehicle or authorized emergency vehicle may:

(a) park or stand, irrespective of the provisions of this chapter;

(b) proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) exceed the speed limits so long as he does not endanger life or property;

(d) disregard regulations governing direction of movement or turning in specified directions.

(3) The exemptions granted to a police vehicle or authorized emergency vehicle apply only when the vehicle is making use of an audible or visual signal, or both, meeting the requirements of 61-9-402.

(4) The foregoing provisions shall not relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

History: En. Sec. 25.1, Ch. 263, L. 1955; amd. Sec. 1, Ch. 169, L. 1957; amd. Sec. 2, Ch. 153, L. 1975; R.C.M. 1947, 32-2128; amd. Sec. 1, Ch. 11, L. 1981.

Cross-References

Department of Justice to furnish equipment, 44-1-105.

"Police vehicle" defined, 61-1-118.

"Authorized emergency vehicles" defined, 61-1-119.

Audible and visual signals on vehicles, 61-9-402.

61-8-108. Traffic laws applicable to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955; R.C.M. 1947, 32-2129.

Cross-References

"Vehicle" defined, 61-1-103.

Traffic laws applicable to persons driving animal-drawn vehicles, 61-9-107.

61-8-109. Rights of owners of real property not affected — when. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

History: En. Sec. 29, Ch. 263, L. 1955; R.C.M. 1947, 32-2132.

Cross-References

Private road or driveway, 61-1-205.

61-8-110. Forest development road, special service road defined. For the purpose of 61-8-111 and 61-8-112 a "forest development road" is defined as a road located on national forest lands or on a right-of-way acquired by the United States and used for the protection, administration, and utilization of the national forests and other lands administered by the United States forest service; and a "special service road" is defined as a forest development road or segment thereof, the right-of-way for which is controlled by the United States and which is not a part of the highway system of the state or of a county or other public road authority of this state, designated by the forest service, pursuant to the regulations of the secretary of the United States department of agriculture, as a special service road for the purpose of controlling and regulating its use to accomplish the purposes of the secretary of agriculture's regulations applicable to the administration of the forest development transport system.

History: En. Sec. 1, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.3.

61-8-111. State laws applicable on forest development roads — enforcement. Forest development roads in the state, whether or not they meet the definition of a public highway by the laws of this state, are subject to the traffic laws of this state and the Montana highway patrol and county sheriffs of this state shall have jurisdiction thereon to investigate accidents and enforce the Montana traffic laws.

History: En. Sec. 2, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.4.

Cross-References

Sheriff's department, Title 7, ch. 32, part 21.

Highway Patrol jurisdiction, Title 44, ch. 1, part 10.

Public highway, 61-1-202.

61-8-112. Special service roads not subject to state law enforcement — when. When forest development roads, or segments thereof, are designated as special service roads by the United States forest service and by such designation are subjected to traffic rules in addition to or in conflict with the Montana traffic laws, neither the additional nor conflicting traffic rules so prescribed by the forest service nor the Montana traffic law with which they conflict shall be within the jurisdiction of law enforcement officers of this state as to such special service road.

History: En. Sec. 3, Ch. 139, L. 1971; R.C.M. 1947, 32-2124.5.

Cross-References

Cession and retrocession of jurisdiction, Title 2, ch. 1, part 2.

Part 2

Traffic-Control Devices

Part Cross-References

Official traffic-control devices, 61-1-403.

Traffic safety program, Title 61, ch. 2, part 1.

61-8-201. Obedience to traffic-control devices — exception for emergency vehicles and funeral processions. (1) The driver of a vehicle shall obey the instructions of an official traffic-control device applicable to his vehicle and placed in accordance with the provisions of this chapter unless otherwise directed by a highway patrol officer or police officer, subject to the exceptions granted in this chapter to the driver of an authorized emergency vehicle and to the driver of a motor vehicle in a funeral procession.

(2) A provision of this chapter for which signs are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state the signs are required, the section is effective even though no signs are erected or in place.

History: En. Sec. 33, Ch. 263, L. 1955; R.C.M. 1947, 32-2136; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 338, L. 1991.

Compiler's Comments

1991 Amendment: At the end of (1) inserted exception concerning driver of a motor vehicle in funeral procession; and made minor changes in style.

Cross-References

"Authorized emergency vehicles" defined, 61-1-119.

61-8-202. Department of transportation to adopt sign manual. The department of transportation shall adopt a manual for a uniform system of traffic-control devices consistent with this chapter for use upon highways within the state. This uniform system shall correlate with and so far as possible conform to the manual on uniform traffic control devices, as amended.

History: En. Sec. 30, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1959; amd. Sec. 52, Ch. 316, L. 1974; R.C.M. 1947, 32-2133; amd. Sec. 1, Ch. 37, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

Examination of applicants for driver's license, 61-5-110.

61-8-203. Department of transportation to sign all state highways. (1) The department of transportation shall place and maintain traffic-control devices, conforming to its manual and specifications, upon all state highways it considers necessary to indicate and to carry out this chapter and chapter 9 or to regulate, warn, or guide traffic.

(2) A local authority may not place or maintain a traffic-control device upon a highway under the jurisdiction of the department except by the latter's permission.

(3) Only the department may erect and maintain these traffic-control devices conforming to its manual and specifications on a controlled-access highway or controlled-access facility. The erection of a sign, marker, or emblem on a controlled-access facility or controlled-access highway by any other public authority, or agent, or by a private individual, firm, or corporation is unlawful and a misdemeanor and punishable as provided in 61-8-712.

(4) The erection or maintenance of a sign, marker, emblem, or traffic-control device on a state highway except a controlled-access highway or controlled-access facility, is subject to the rules and specifications the department adopts and publishes in the interest of public safety and convenience.

History: En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; R.C.M. 1947, 32-2134(a) thru (d); amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

General powers of Department of Transportation, 60-2-201.

Maintenance agreements with local governments, 60-2-204.

Vocational-technical center signs — location — specifications, 60-2-216.

Control of access, Title 60, ch. 5, part 1.

Erection of signs, 61-8-704.

Penalty for erection of unauthorized sign, 61-8-712.

61-8-204. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of 61-8-713, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the state special revenue fund in the sum of $100.

History: En. Sec. 2, Ch. 184, L. 1965; R.C.M. 1947, 32-2134.2; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Rewards for apprehension of criminals, 7-32-2301.

Fund structure, 17-2-102.

61-8-205. Posting of penalties along highways. The department of transportation shall post notices of 61-8-713, and the penalties provided for, at locations designated by the department.

History: En. Sec. 3, Ch. 184, L. 1965; amd. Sec. 54, Ch. 316, L. 1974; R.C.M. 1947, 32-2134.3; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

61-8-206. Local traffic-control devices. Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

History: En. Sec. 32, Ch. 263, L. 1955; R.C.M. 1947, 32-2135.

Cross-References

Municipal regulation of trafficways and public grounds, 7-14-4102.

Powers of local authorities to regulate traffic, 61-12-101.

61-8-207. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only must be used and the terms and lights must indicate and apply to drivers of vehicles and pedestrians as follows:

(1) green alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at the place prohibits either turn. But vehicular traffic, including vehicles turning right or left, must yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) yellow alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is warned that the red or "Stop" signal will be exhibited immediately thereafter and vehicular traffic may not enter or be crossing the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing the signals are advised that there is insufficient time to cross the roadway, and a pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) red alone or "Stop":

(a) Vehicular traffic facing the signal must stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and must remain standing until green or "Go" is shown alone, until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making the turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at the intersection, the movement cannot be made until green or "Go" is shown alone.

(b) A pedestrian facing a signal may not enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(4) red with a green arrow:

(a) Vehicular traffic facing a signal may cautiously enter the intersection only to make the movement indicated by the arrow but must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) A pedestrian facing a signal may not enter the roadway unless he can do so safely and without interfering with vehicular traffic.

(5) traffic-control signal at a place other than an intersection:

(a) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable except as to those provisions that by their very nature can have no application.

(b) Any stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any sign or marking, the stop must be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955; amd. Sec. 1, Ch. 211, L. 1963; amd. Sec. 1, Ch. 206, L. 1974; R.C.M. 1947, 32-2137; amd. Sec. 1, Ch. 62, L. 1979; amd. Sec. 47, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: Near end of (1)(a), after "intersection", substituted "or" for "of"; and made minor changes in style.

Cross-References

"Traffic-control signal" defined, 61-1-402.

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

Pedestrians subject to traffic regulations, 61-8-501.

61-8-208. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Wait" or "Don't Walk" are in place such signals shall indicate as follows:

(1) Walk. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait or Don't Walk. No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

History: En. Sec. 35, Ch. 263, L. 1955; R.C.M. 1947, 32-2138.

Cross-References

"Pedestrian" defined, 61-1-308.

"Safety zone" defined, 61-1-405.

61-8-209. Flashing signals. (1) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(a) Flashing red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(b) Flashing yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(2) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in 61-8-347.

History: En. Sec. 36, Ch. 263, L. 1955; amd. Sec. 2, Ch. 169, L. 1957; R.C.M. 1947, 32-2139.

Cross-References

"Railroad sign" or "signal" defined, 61-1-404.

61-8-210. Display of unauthorized signs, signals, or markings. (1) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign, or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal.

(2) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(4) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school.

History: En. Sec. 37, Ch. 263, L. 1955; R.C.M. 1947, 32-2140(a) thru (d).

Cross-References

Highway encroachments, Title 60, ch. 6.

Removal of unauthorized sign, 61-8-706.

Penalty for erection of unauthorized sign, 61-8-712.

Part 3

Vehicle Operating Requirements

Part Cross-References

Vehicle Equipment Safety Compact, Title 61, ch. 2, part 2.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Records and reports of convictions, Title 61, ch. 11.

61-8-301. Reckless driving. (1) A person commits the offense of reckless driving if he:

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property;

(b) operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402; or

(c) operates any vehicle in willful or wanton disregard for the safety of persons or property while passing, in either direction, a school bus which has stopped and is displaying the visual flashing red signal as provided in 61-8-351 and 61-9-402. This subsection (1)(c) does not apply to situations described in 61-8-351(5).

(2) Each municipality in this state may enact and enforce 61-8-715 and subsection (1) of this section as an ordinance.

History: En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977; R.C.M. 1947, 32-2143(1), (4); amd. Sec. 1, Ch. 209, L. 1979; amd. Sec. 1, Ch. 221, L. 1985.

Cross-References

Regulation of motor vehicles, 7-14-4103.

Liability for negligence as well as willful acts, 27-1-701.

Resisting arrest, 45-7-301.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

Application — exceptions, 61-8-101.

Reckless driving — penalty, 61-8-715.

61-8-302. Careless driving. A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

History: En. 32-2143.3 by Sec. 1, Ch. 294, L. 1977; R.C.M. 1947, 32-2143.3.

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Disorderly conduct, 45-8-101.

"Public highway" defined, 61-1-202.

Careless driving — penalty, 61-8-716.

61-8-303. Speed restrictions — basic rule. (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and he shall drive it so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) Where no special hazard exists that requires lower speed for compliance with subsection (1) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309, 61-8-310, 61-8-311, and 61-8-313 is lawful, but a speed in excess of those limits is unlawful:

(a) 25 miles per hour in an urban district;

(b) 35 miles per hour on a highway under construction or repair or on a highway being surveyed;

(c) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(4) The speed limits set forth in this section may be altered by the highway commission as authorized in 61-8-309, 61-8-310, and 61-8-313.

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967; amd. Sec. 55, Ch. 316, L. 1974; R.C.M. 1947, 32-2144; amd. Sec. 1, Ch. 173, L. 1989.

Cross-References

Highway Commission, 2-15-2502; Title 60, ch. 2, part 1.

"Intersection" defined, 61-1-212.

Urban district, 61-1-410.

Erection of signs, 61-8-704.

61-8-304. Fuel conservation speed limit — exception to the basic rule. (1) In order to insure conservation of a resource, the speed limit for vehicles traveling on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 65 miles an hour and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more or on any other public highway of this state is 55 miles an hour, except as provided under 61-8-309.

(2) A speed limit imposed pursuant to this section is an exception to the requirements of 61-8-303 and 61-8-312, and a speed in excess of the speed limit established pursuant to this section is unlawful notwithstanding any provision of 61-8-303 and 61-8-312.

History: En. 32-2144.1 by Sec. 1, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.1; amd. Sec. 66, Ch. 421, L. 1979; amd. Sec. 1, Ch. 681, L. 1983; amd. Sec. 1, Ch. 521, L. 1987.

Cross-References

Assent to federal law, 60-3-101.

Violation of 61-8-304 not a misdemeanor, 61-8-718.

Violation of conservation speed limit — no record permitted, 61-11-103.

61-8-305. Applicability of conservation speed limit. (1) The provisions of 61-8-304 do not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on March 2, 1974, under any other state, county, municipal, or other local law, ordinance, regulation, or order.

(2) The fuel conservation speed limits imposed by 61-8-304 remain in effect only as long as the establishment of those speed limits by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal-Aid Highways Amendments of 1974 and all acts amendatory thereto or any other federal statute.

(3) If the speed limit of 55 miles an hour for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is no longer required by federal law as a condition to the state's continuing eligibility for federal highway funding, the speed limit within an urbanized area increases to 65 miles an hour.

(4) If there is no speed limit required by federal law as a condition to the state's continuing eligibility for federal highway funding, then the speed limit on Montana highways is subject to the basic rule and other speed restrictions in 61-8-303.

History: En. 32-2144.2, 32-2144.3, 32-2144.4 by Secs. 2, 3, 4, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.2, 32-2144.3, 32-2144.4; amd. Sec. 2, Ch. 681, L. 1983; amd. Sec. 1, Ch. 499, L. 1989.

Cross-References

Assent to federal law, 60-3-101.

Penalty for violation of conservation speed limit, 61-8-718.

61-8-306. Lower speed limits. Nothing in 61-8-304 through 61-8-307 shall prohibit any state, county, municipal, or other local official, board, or body which has authority to enact laws relating to motor vehicle speed limits from establishing speed limits lower than that required by federal law on any public streets or highways as permitted by law on March 2, 1974.

History: En. 32-2144.5 by Sec. 5, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.5.

Cross-References

General powers of county relating to roads and bridges, 7-14-2101.

Municipal regulation of trafficways and public grounds, 7-14-4102.

61-8-307. Existing statutes not affected. Sections 61-8-304 through 61-8-306 in no way affect traffic control statutes and violations of existing statutes shall be prosecuted solely as provided therein.

History: En. 32-2144.7 by Sec. 7, Ch. 60, L. 1974; R.C.M. 1947, 32-2144.7.

61-8-308. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county, or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967; R.C.M. 1947, 32-2143.1.

Cross-References

Penalty for unauthorized drag racing, 61-8-717.

61-8-309. Establishment of special speed zones. (1) If the department of transportation determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, dangerous location, or any other part of a highway under its jurisdiction, the commission may set a reasonable and safe special speed limit at that part.

(2) The department shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times, or at other times the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a state-wide speed limit.

History: En. Sec. 42, Ch. 263, L. 1955; amd. Sec. 1, Ch. 204, L. 1959; amd. Sec. 1, Ch. 178, L. 1961; amd. Sec. 56, Ch. 316, L. 1974; R.C.M. 1947, 32-2145; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway Commission, Title 60, ch. 2, part 1.

General powers of Department of Transportation, 60-2-201.

Erection of signs, 61-8-704.

61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and

61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit thereon which:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 15 miles per hour; or

(d) decreases the limit in an area near a school or a designated crosswalk, as crosswalk is defined in 61-1-209, near a school to not less than 80%, rounded down to the nearest whole number evenly divisible by 5 but not less than 25 miles an hour, of the speed limit that would be set on the basis of an engineering and traffic investigation.

(2) A board of county commissioners may set limits as provided in subsection (1)(c) without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit thereon which may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions thereof in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

History: En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146; amd. Sec. 2, Ch. 614, L. 1985; amd. Sec. 1, Ch. 686, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(d) allowing a local authority to decrease the speed limit in areas near schools or designated crosswalks to a percentage of the limit that would be set on the basis of an engineering and traffic investigation; in (3), after "jurisdiction", substituted "may" for "shall" and after "determine" deleted "by an engineering and traffic investigation"; at beginning of (5) inserted exception clause; and made minor changes in style. Amendment effective April 27, 1991.

Cross-References

General powers relating to county roads, 7-14-2102.

County authority to establish speed limits, 7-14-2113.

Regulation of trafficways and public grounds, 7-14-4102.

Regulation of motor vehicles, 7-14-4103.

Erection of signs, 61-8-704.

61-8-311. Minimum speed regulations. (1) A person may not drive a motor vehicle at a speed slow enough to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(2) On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow-moving vehicle, including a passenger vehicle, behind which four or more vehicles are formed in line shall turn off the roadway at the nearest place designated as a turnout by signs

erected by the authority having jurisdiction over the highway or wherever sufficient area for a safe turnout exists in order to permit the vehicles following it to proceed. If the shoulder of the highway to the right of the overtaken vehicle is wide enough and is in a condition allowing safe travel, the driver of the overtaken vehicle may drive onto the shoulder and proceed at a safe speed until passed. As used in this section a slow-moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. The department of transportation is authorized to designate and construct such turnouts and to erect signs at appropriate places advising motorists of this statute.

(3) If the department of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the commission or the local authority may set a minimum speed limit below which a person may not drive a vehicle except when necessary for safe operation or in compliance with law.

History: En. Sec. 44, Ch. 263, L. 1955; amd. Sec. 1, Ch. 387, L. 1973; amd. Sec. 58, Ch. 316, L. 1974; R.C.M. 1947, 32-2147; amd. Sec. 1, Ch. 15, L. 1983; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Municipal regulation of trafficways and public grounds, 7-14-4102.

General powers of Department of Transportation, 60-2-201.

Slow-moving vehicles, 61-9-415.

61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers. (1) A person may not operate a truck or truck tractor, the gross weight of which exceeds 8,000 pounds, at a speed greater than 65 miles per hour on those completed sections of interstate and four-lane divided highways and 60 miles per hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit may not exceed that of automobiles, as stated in 61-8-303.

(2) A person may not operate a vehicle subject to a term permit under 61-10-124(3)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(6) at a speed greater than 55 miles per hour.

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles per hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(4) A person may not operate a vehicle that is towing a housetrailer at a speed greater than a maximum of 50 miles per hour.

History: En. Sec. 45, Ch. 263, L. 1955; amd. Sec. 1, Ch. 241, L. 1957; amd. Sec. 1, Ch. 119, L. 1961; amd. Sec. 1, Ch. 253, L. 1971; R.C.M. 1947, 32-2148; amd. Sec. 1, Ch. 474, L. 1987; amd. Sec. 1, Ch. 437, L. 1989; amd. Sec. 48, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (2) corrected citation to subsection of 61-10-124; and made minor changes in style.

Cross-References

"Motor-driven cycle" defined, 61-1-106.

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.
"Housetrailer" defined, 61-1-501.
"Gross weight" defined, 61-1-502.
Lamps on other vehicles and equipment, 61-9-216.

61-8-313. Special speed limitations. (1) A person may not drive a vehicle equipped with solid rubber or cushion tires at a speed greater than 10 miles per hour.

(2) A person may not drive a vehicle over a bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure when the structure is signposted as provided in this section.

(3) The department of transportation upon request from a local authority may, or upon its own initiative shall, conduct an investigation of a bridge or other elevated structure constituting a part of a highway, and if it finds on investigation that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible under this chapter, the commission shall set the maximum speed of vehicles which the structure can withstand, and the department shall erect and maintain suitable signs stating the maximum speed at a distance of not less than 100 feet before each end of the structure.

(4) Upon the trial of a person charged with a violation of this section, proof of the setting of the maximum speed by the commission and the existence of the signs is conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

History: En. Sec. 46, Ch. 263, L. 1955; amd. Sec. 59, Ch. 316, L. 1974; R.C.M. 1947, 32-2149; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Maintenance and control of bridges, 7-14-2201.

Evidence — complete list of conclusive presumptions, 26-1-601.

General powers of Department of Transportation, 60-2-201.

"Solid tire" defined, 61-1-126.

Department of Transportation to sign all state highways, 61-8-203.

Erection of signs, 61-8-704.

61-8-314 through 61-8-320 reserved.

61-8-321. Drive on right side of roadway — exceptions. (1) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(a) when overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(b) when the right half of a roadway is closed to traffic while under construction or repair;

(c) upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(d) upon a roadway designated and signposted for one-way traffic.

(2) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or

when preparing for a left turn at an intersection or into a private road or driveway.

History: **En. Sec. 48, Ch. 263, L. 1955; R.C.M. 1947, 32-2151.**

Cross-References

"Laned roadway" defined, 61-1-207.

61-8-322. Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction, each driver shall give to the other at least one-half of the main-traveled portion of the roadway.

History: **En. Sec. 49, Ch. 263, L. 1955; R.C.M. 1947, 32-2152; amd. Sec. 67, Ch. 421, L. 1979.**

61-8-323. Overtaking a vehicle on the left. The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. When giving way to the right on a two-lane highway, he may travel upon the shoulder at a safe speed until passed if the shoulder is wide enough and is in a condition allowing safe travel.

History: **En. Sec. 50, Ch. 263, L. 1955; R.C.M. 1947, 32-2153; amd. Sec. 2, Ch. 15, L. 1983.**

61-8-324. When overtaking on right is permitted. (1) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(a) when the vehicle overtaken is making or about to make a left turn;

(b) upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

(c) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

History: **En. Sec. 51, Ch. 263, L. 1955; R.C.M. 1947, 32-2154.**

61-8-325. Limitations on overtaking on the left. (1) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction.

(2) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(a) when approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(b) when approaching within 100 feet of or traversing any intersection or railroad grade crossing;

(c) when the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel.

(3) The foregoing limitations shall not apply upon a one-way roadway.

History: En. Secs. 52, 53, Ch. 263, L. 1955; R.C.M. 1947, 32-2155, 32-2156.

Cross-References

Slow-moving vehicles, 61-9-415.

61-8-326. No-passing zones. (1) The department of transportation may determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous, and it may by appropriate signs or markings on the roadway indicate the beginning and end of these zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of those signs.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1) a driver may not drive on the left side of the roadway within the no-passing zone or on the left side of a pavement striping designed to mark the no-passing zone throughout its length.

History: En. Sec. 54, Ch. 263, L. 1955; amd. Sec. 1, Ch. 97, L. 1957; amd. Sec. 60, Ch. 316, L. 1974; R.C.M. 1947, 32-2157; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

"Laned roadway" defined, 61-1-207.

Obedience to traffic-control devices, 61-8-201.

Department of Transportation to sign all state highways, 61-8-203.

61-8-327. One-way roadways and rotary traffic islands. (1) The department of transportation may designate a highway or a separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice of that designation.

(2) Upon a roadway designated and signposted for one-way traffic a vehicle may be driven only in the direction designated.

(3) A vehicle passing around a rotary traffic island may be driven only to the right of such island.

History: En. Sec. 55, Ch. 263, L. 1955; amd. Sec. 61, Ch. 316, L. 1974; R.C.M. 1947, 32-2158; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

Obedience to traffic-control devices, 61-8-201.

61-8-328. Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(3) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

History: En. Sec. 56, Ch. 263, L. 1955; R.C.M. 1947, 32-2159.

Cross-References

"Laned roadway" defined, 61-1-207.

Obedience to traffic-control devices, 61-8-201.

Slow-moving vehicles, 61-9-415.

61-8-329. Following too closely. (1) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(2) The driver of any truck tractor, truck, or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck, or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck, or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(3) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter

and occupy such space without danger. This provision shall not apply to funeral processions.

History: **En. Sec. 57, Ch. 263, L. 1955; R.C.M. 1947, 32-2160.**

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

"Business district" defined, 61-1-408.

"Residence district" defined, 61-1-409.

Use of multiple-beam road-lighting equipment, 61-9-221.

61-8-330. Driving on divided highways. Whenever any highway has been divided into two roadways by leaving an intervening space or by physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

History: **En. Sec. 58, Ch. 263, L. 1955; R.C.M. 1947, 32-2161.**

61-8-331. Restricted and controlled access. (1) No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

(2) On any controlled-access highway or facility it is unlawful for any person to:

(a) drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line;

(b) make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line;

(c) drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section, or line;

(d) drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility;

(e) construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

History: **(1)En. Sec. 59, Ch. 263, L. 1955; Sec. 32-2162, R.C.M. 1947; (2)En. Sec. 10-111, Ch. 197, L. 1965; Sec. 32-4311, R.C.M. 1947; R.C.M. 1947, 32-2162, 32-4311(1).**

Cross-References

"Private road" or "driveway" defined, 61-1-205.

"Controlled-access highway" defined, 61-1-211.

Penalty for violation, 61-8-720.

61-8-332. Restrictions on use of controlled-access roadway. (1) The department of transportation may by rule and local authorities may by ordinance prohibit the use of a controlled-access highway under their respective jurisdictions by pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor-driven cycle.

(2) The department or the local authority which adopts the prohibitory regulation shall erect and maintain official signs on the controlled-access

roadway on which these regulations are applicable. It is unlawful for a person to violate the restrictions stated on those signs.

History: En. Sec. 60, Ch. 263, L. 1955; amd. Sec. 62, Ch. 316, L. 1974; R.C.M. 1947, 32-2163; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Municipal ordinances, 7-5-4201.

General powers of Department of Transportation, 60-2-201.

"Motor-driven cycle" defined, 61-1-106.

"Bicycle" defined, 61-1-123.

"Controlled-access highway" defined, 61-1-211.

"Pedestrian" defined, 61-1-308.

Obedience to traffic-control devices, 61-8-201.

61-8-333. Required position and method of turning at intersections — bicycle turn procedures — signs. (1) The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(b) Left turn on two-way roadways. At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(c) Left turns on other than two-way roadways. At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

(d) A person making a turn under subsections (1)(a), (1)(b), or (1)(c) is entitled to the full use of the lane from which the turn may be legally made.

(2) (a) A person operating a bicycle who intends to turn left shall follow the course described in subsection (1) or in subsection (2)(b).

(b) A person operating a bicycle who intends to turn left shall approach the turn as close as practicable to the right curb or edge of the roadway. After proceeding across the intersecting roadway, the person shall make the turn as close as practicable to the curb or edge of the roadway on the far right side of the intersection. After turning, the person shall yield to through traffic and shall comply with any official traffic-control device or police officer regulating traffic on the highway along which he intends to proceed.

(3) Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section

be traveled by vehicles turning at an intersection, and when markers, buttons, or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

History: En. Sec. 61, Ch. 263, L. 1955; R.C.M. 1947, 32-2164; amd. Sec. 3, Ch. 450, L. 1983.

Cross-References

Municipal regulation of trafficways and public grounds, 7-14-4102.

"Bicycle" defined, 61-1-123.

"Intersection" defined, 61-1-212.

Traffic laws applicable to persons operating bicycles, 61-8-602.

Signal lamps and signal devices, 61-9-218.

61-8-334. Turning on curve or crest of grade prohibited. No vehicle shall be turned so as to proceed in the opposite direction upon any curve or upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 500 feet.

History: En. Sec. 62, Ch. 263, L. 1955; R.C.M. 1947, 32-2165.

61-8-335. Starting parked vehicle. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

History: En. Sec. 63, Ch. 263, L. 1955; R.C.M. 1947, 32-2166.

Cross-References

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

61-8-336. Turning movements and required signals. (1) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required by 61-8-333 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(2) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning in any business, residence, or urban district as defined in 61-1-408 through 61-1-410.

(3) A signal of intention to turn right or left, other than when passing, when required shall be given continuously during not less than the last 300 feet traveled by the vehicle before turning in areas other than those set forth in subsection (2).

(4) A signal by hand and arm need not be given continuously by the person operating a bicycle if the hand is needed in the control or operation of the bicycle.

(5) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

History: En. Sec. 64, Ch. 263, L. 1955; R.C.M. 1947, 32-2167; amd. Sec. 1, Ch. 14, L. 1981; amd. Sec. 4, Ch. 450, L. 1983.

Cross-References

"Bicycle" defined, 61-1-123.

Traffic laws applicable to persons operating bicycles, 61-8-602.

61-8-337. Signals by hand and arm or signal device. (1) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps, except as otherwise provided in subsection (2).

(2) Any motor vehicle in use on a highway shall be equipped with and required signal shall be given by a signal lamp or lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds 24 inches or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

History: En. Sec. 65, Ch. 263, L. 1955; amd. Sec. 1, Ch. 105, L. 1957; R.C.M. 1947, 32-2168.

Cross-References

Signal lamps and signal devices, 61-9-218.

61-8-338. Method of giving hand-and-arm signals. (1) Except as provided in subsection (2), all signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(a) Left turn. Hand and arm extended horizontally.

(b) Right turn. Hand and arm extended upward.

(c) Stop or decrease speed. Hand and arm extended downward.

(2) The person operating a bicycle may signal a right turn by extending the right hand and arm horizontally.

History: En. Sec. 66, Ch. 263, L. 1955; R.C.M. 1947, 32-2169; amd. Sec. 5, Ch. 450, L. 1983.

Cross-References

Traffic laws applicable to persons operating bicycles, 61-8-602.

61-8-339. Vehicle approaching or entering intersection. (1) When two vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(2) The right-of-way rule declared in subsection (1) is modified at through highways and otherwise as stated in this chapter.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965; R.C.M. 1947, 32-2170; amd. Sec. 68, Ch. 421, L. 1979.

Cross-References

"Through highway" defined, 61-1-210.

"Intersection" defined, 61-1-212.

"Right-of-way" defined, 61-1-406.

61-8-340. Vehicle turning left at intersection. The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. The provisions of this section shall not be applicable where it is otherwise directed by appropriate signs or signals.

History: En. Sec. 68, Ch. 263, L. 1955; R.C.M. 1947, 32-2171.

Cross-References

"Intersection" defined, 61-1-212.

"Right-of-way" defined, 61-1-406.

61-8-341. Vehicle entering through highway or stop intersection. (1) The driver of a vehicle shall stop as required by 61-8-344 at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highway or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on said through highway shall yield the right-of-way to the vehicle so proceeding into or across the through highway.

(2) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

History: En. Sec. 69, Ch. 263, L. 1955; amd. Sec. 3, Ch. 169, L. 1957; R.C.M. 1947, 32-2172.

Cross-References

"Through highway" defined, 61-1-210.

"Intersection" defined, 61-1-212.

"Right-of-way" defined, 61-1-406.

61-8-342. Vehicles approaching "Yield" sign. When the intersection is designated by the department of transportation, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than 15 miles per hour and yield right-of-way to all vehicles approaching from the right or left on the intersecting roads or streets which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right-of-way.

History: En. Sec. 71, Ch. 263, L. 1955; amd. Sec. 1, Ch. 96, L. 1963; amd. Sec. 63, Ch. 316, L. 1974; R.C.M. 1947, 32-2174; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

"Right-of-way" defined, 61-1-406.

Obedience to traffic-control devices, 61-8-201.

61-8-343. Vehicle entering highway from private road, driveway, or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway, or public approach ramp shall yield the right-of-way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965; R.C.M. 1947, 32-2173.

Cross-References

"Private road" or "driveway" defined, 61-1-205.

"Right-of-way" defined, 61-1-406.

61-8-344. Vehicles to stop at stop signs. (1) The department of transportation with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances to these highways or may designate an intersection as a stop intersection and erect similar signs at one or more entrances to that intersection.

(2) The sign shall bear the word "Stop" in letters not less than 8 inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination or by a fixed floodlight projected on the face of the sign or by efficient reflecting elements on the face of the sign.

(3) The stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway.

(4) A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, he shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer or highway patrol officer or traffic-control signal.

History: En. Sec. 92, Ch. 263, L. 1955; amd. Sec. 65, Ch. 316, L. 1974; R.C.M. 1947, 32-2195; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

"Crosswalk" defined, 61-1-209.

"Through highway" defined, 61-1-210.

"Traffic-control signal" defined, 61-1-402.

Obedience to police officers and highway patrol officers, 61-8-105.

Obedience to traffic-control devices, 61-8-201.

Department of Transportation to sign all state highways, 61-8-203.

61-8-345. Stop before emerging from alley, driveway, or building. The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

History: En. Sec. 93, Ch. 263, L. 1955; R.C.M. 1947, 32-2196.

Cross-References
"Pedestrian" defined, 61-1-308.
"Right-of-way" defined, 61-1-406.
"Business district" defined, 61-1-408.
"Residence district" defined, 61-1-409.

61-8-346. Operation of vehicles on approach of police vehicles or authorized emergency vehicles. (1) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of 61-9-402 or of a police vehicle properly and lawfully making use of an audible signal only, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the police vehicle or authorized emergency vehicle has passed, except when otherwise directed by a police officer or highway patrol officer.

(2) This section shall not operate to relieve the driver of a police vehicle or authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

History: En. Sec. 72, Ch. 263, L. 1955; amd. Sec. 4, Ch. 169, L. 1957; amd. Sec. 3, Ch. 153, L. 1975; R.C.M. 1947, 32-2175; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References
"Police vehicle" defined, 61-1-118.
"Authorized emergency vehicles" defined, 61-1-119.
"Right-of-way" defined, 61-1-406.
Obedience to police officers and highway patrol officers, 61-8-105.

61-8-347. Obedience to signal indicating approach of train. (1) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad, and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(a) a clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) a crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(c) a railroad train approaching within approximately 1,500 feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(d) an approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(2) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

History: En. Sec. 88, Ch. 263, L. 1955; R.C.M. 1947, 32-2191.

Cross-References
"Railroad sign" or "signal" defined, 61-1-404.
"Flag person" defined, 61-1-411.
Flashing signals, 61-8-209.
Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-348. All vehicles to stop at certain railroad grade crossings. The department of transportation and local authorities may designate particularly dangerous highway grade crossings of railroads and erect stop signs at these crossings. When these stop signs are erected, the driver of a vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall proceed only upon exercising due care.

History: En. Sec. 89, Ch. 263, L. 1955; amd. Sec. 64, Ch. 316, L. 1974; R.C.M. 1947, 32-2192; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

"Railroad sign" or "signal" defined, 61-1-404.

Operation of trains at grade crossings, 69-14-239.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-349. Certain vehicles to stop at all railroad grade crossings. (1) A person driving a motor vehicle upon a public highway of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring the vehicle to a full stop not less than 10 or more than 100 feet from the intersection of the highway and the railroad tracks, before crossing the railroad tracks, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

(2) (a) Except as provided in subsection (2)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door (in the case of a school bus) and shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train and may not proceed until he can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the driver of a vehicle shall cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The driver may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or traffic-control signal directs traffic to proceed.

(3) As used in this section, "traffic-control signal" does not include a railroad grade crossing signal.

History: (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2) thru (4)Ap p. Sec. 90, Ch. 263, L. 1955; amd. Sec. 1, Ch. 244, L. 1977; Sec. 32-2193, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2193, 72-164(part), 75-7007(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 449, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (2)(a) inserted exception clause, before "passengers" inserted "seven or more", and after "school bus" inserted "with or without passengers"; deleted (2)(c) that read: "(c) This subsection (2) shall not apply at street railway grade crossings within a business or residence district"; inserted (3) concerning meaning of traffic control signal; and made minor changes in style.

Cross-References

"School bus" defined, 20-10-101, 61-1-116.

"Railroad sign" or "signal" defined, 61-1-404.

"Flag person" defined, 61-1-411.

"Explosives" defined, 61-1-506.

"Flammable liquid" defined, 61-1-507.

Carriers of passengers, 69-11-201.

Operation of trains at grade crossings, 69-14-239.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-350. Moving heavy equipment at railroad grade crossings. (1) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of 10 or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(2) Notice of any such intended crossing shall be given to a station agent of such railroad and reasonable time be given to such railroad to provide proper protection at such crossing.

(3) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet or more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(4) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

History: En. Sec. 91, Ch. 263, L. 1955; R.C.M. 1947, 32-2194.

Cross-References

"Flag person" defined, 61-1-411.

Operation of trains at grade crossings, 69-14-239.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-351. Meeting or passing school bus — identification of violator — penalty. (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped on the highway or street for the purpose of receiving or discharging any school children shall stop the vehicle not less than 10 feet before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in 61-9-402 and said driver shall not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street on which they live and until such school bus resumes motion or the driver has signaled traffic to proceed.

(2) In addition the driver of a vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and be prepared to stop when meeting or overtaking from either direction any school bus which is preparing to stop on the highway or street for the purpose of

receiving or discharging any school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights shall be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway or street whether inside or outside the corporate limits of any city or town for the purpose of receiving or discharging school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site for purposes of receiving or discharging school children and such receipt or discharge does not involve street crossing by the children; and such lights may not be operated in violation of such a policy.

(4) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(5) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(6) Whenever a vehicle is established to have been in violation of subsection (1) and the identity of the driver of said vehicle cannot be established, the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.

(7) Violation of subsection (1) is punishable upon conviction by a fine of not more than $500.

History: **Ap. p. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971; amd. Sec. 2, Ch. 244, L. 1977; Sec. 32-2197, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2197, 75-7007(part); amd. Sec. 1, Ch. 305, L. 1979; amd. Sec. 2, Ch. 221, L. 1985; amd. Sec. 1, Ch. 366, L. 1985.**

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.

"School bus" defined, 20-10-101, 61-1-116.

"Controlled-access highway" defined, 61-1-211.

Reckless driving — passing stopped school bus, 61-8-301.

61-8-352. Prohibited operation of special lighting equipment on school buses. It shall be unlawful to operate any flashing prewarning or warning signal light on any school bus except when the school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: **Ap. p. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965; Sec. 32-2198, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 32-2198, R.C.M. 1947; R.C.M. 1947, 32-2198, 75-7007(part).**

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.

Additional lighting equipment required on certain vehicles, 61-9-208.

61-8-353. Stopping, standing, or parking outside of business or residence districts. (1) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practical to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles. No person shall stop, stand, or park any vehicle upon such highway unless such vehicle can be seen by the driver of any other vehicle approaching from either direction within 500 feet and unless drivers approaching from opposite directions are visible to each other when both are at least 500 feet from the vehicle to be stopped, turned, or parked, except in cases of justifiable emergency.

(2) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

History: En. Sec. 96, Ch. 263, L. 1955; R.C.M. 1947, 32-2199.

Cross-References

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

"Business district" defined, 61-1-408.

"Residence district" defined, 61-1-409.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions. (1) No person shall stop, stand, or park a vehicle, except as allowed under subsection (2) or when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or highway patrol officer or traffic-control device, in any of the following places:

(a) on a sidewalk;

(b) in front of a public or private driveway;

(c) within an intersection;

(d) within 15 feet of a fire hydrant;

(e) on a crosswalk;

(f) within 20 feet of a crosswalk at an intersection;

(g) within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a roadway;

(h) between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless the local authorities indicate a different length by signs or markings;

(i) within 50 feet of the nearest rail of a railroad crossing;

(j) within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance when properly signposted;

(k) alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;

(l) on the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(m) upon any bridge or other elevated structure upon a highway or within a highway tunnel;

(n) at any place where official signs prohibit stopping.

(2) A bicycle may be parked on a sidewalk and other such places if the parking does not impede normal and reasonable movement of pedestrians or other traffic.

(3) A public bus stop may not be established in the areas described in subsections (1)(a) through (c) and (e). Otherwise, this section does not prohibit the establishment of public bus stops and the regulation of their use by a local government. Such a bus stop must be established by ordinance pursuant to a traffic and engineering study. Such establishment is subject to review and approval by the department of transportation if the bus stop is to be established on a street or highway under its jurisdiction.

(4) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful.

History: En. Sec. 98, Ch. 263, L. 1955; R.C.M. 1947, 32-21-101; amd. Sec. 1, Ch. 417, L. 1981; amd. Sec. 6, Ch. 450, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Construction and maintenance of sidewalks, curbs, and gutters, 7-14-4122.

Municipal bus service, Title 7, ch. 14, part 44.

"Bicycle" defined, 61-1-123.

"Private road" or "driveway" defined, 61-1-205.

"Sidewalk" defined, 61-1-208.

"Crosswalk" defined, 61-1-209.

"Intersection" defined, 61-1-212.

"Safety zone" defined, 61-1-405.

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

Obedience to police officers and highway patrol officers, 61-8-105.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

Railroad highway crossings, Title 69, ch. 14, part 6.

61-8-355. Additional parking regulations. (1) Except as otherwise provided in this section, a vehicle stopped or parked upon a roadway where there are adjacent curbs shall be stopped or parked with the right-hand wheels of the vehicle parallel to and within 18 inches of the right-hand curb.

(2) A local authority may by ordinance permit parking of a vehicle with the left-hand wheels adjacent to and within 18 inches of the left-hand curb of a one-way roadway.

(3) A local authority may by ordinance permit angle parking on a roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the department of transportation determines that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(4) The department with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of

vehicles on a highway where in its opinion this stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic on it. These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs.

History: En. Sec. 99, Ch. 263, L. 1955; amd. Sec. 66, Ch. 316, L. 1974; R.C.M. 1947, 32-21-102; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Construction and maintenance of sidewalks, curbs, and gutters, 7-14-4122.

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

Department of Transportation to sign all state highways, 61-8-203.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

61-8-356. Prohibition against parking or leaving vehicles on public property. No vehicle shall be parked or left standing upon the right-of-way of any public highway for a period longer than 48 hours, or upon a city street, or any state, county, or city property for a period longer than 5 days.

History: En. Sec. 1, Ch. 288, L. 1967; amd. Sec. 1, Ch. 169, L. 1969; R.C.M. 1947, 53-901.

Cross-References

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

Penalty for leaving vehicle on public property, 61-8-719.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-357. Unattended motor vehicles. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway in such a manner as to prevent the vehicle from rolling onto the roadway.

History: En. Sec. 100, Ch. 263, L. 1955; R.C.M. 1947, 32-21-103.

Cross-References

Lamps on parked vehicles, 61-9-214.

61-8-358. Limitations on backing. The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

History: En. Sec. 101, Ch. 263, L. 1955; R.C.M. 1947, 32-21-104.

61-8-359. Riding on motorcycles. (1) A person operating a motorcycle or quadricycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person; nor shall any other person ride on a motorcycle or quadricycle unless such motorcycle or quadricycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or quadricycle or the view of the operator.

(3) No person operating a motorcycle or quadricycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Sidesaddle" riding on a motorcycle or quadricycle is prohibited.

(5) Motorcycles and quadricycles are to be operated with lights on at all times when operated on any public highway or street, except that if the motorcycle is registered under 61-3-411 as a collector's item, it may be operated without lights from one-half hour before sunrise to one-half hour after sunset if persons and vehicles are clearly discernible at a distance of 500 feet.

(6) Not more than two motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles, including motorcycles and quadricycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two abreast in a single traffic lane.

(8) Every person riding a motorcycle or quadricycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967; R.C.M. 1947, 32-21-105; amd. Sec. 1, Ch. 345, L. 1983; amd. Sec. 35, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

Headlamps on motor vehicles, 61-9-203.

Headgear required for minor motorcycle riders, 61-9-417.

Motorcycle noise suppression devices, 61-9-418.

61-8-360. Obstruction to driver's view or driving mechanism. (1) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such number of persons exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(2) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides or to interfere with his control over the driving mechanism of the vehicle.

History: En. Sec. 103, Ch. 263, L. 1955; R.C.M. 1947, 32-21-106.

Cross-References

Windshields to be unobstructed and equipped with wipers, 61-9-405.

61-8-361. Driving on mountain highways. The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible.

History: En. Sec. 104, Ch. 263, L. 1955; R.C.M. 1947, 32-21-107.

Cross-References

Provisions relating to forest development and special service roads, 61-8-110 through 61-8-112.

61-8-362. Coasting prohibited. The driver of any motor vehicle when traveling upon a downgrade shall not coast with the gears of such vehicle in neutral or with the clutch manually disengaged.

History: En. Sec. 105, Ch. 263, L. 1955; R.C.M. 1947, 32-21-108.

61-8-363. Following fire apparatus prohibited. The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

History: En. Sec. 106, Ch. 263, L. 1955; R.C.M. 1947, 32-21-109.

Cross-References

Local government — provision for fire equipment, 7-33-4202.

"Authorized emergency vehicle" defined, 61-1-119.

Following too closely, 61-8-329.

61-8-364. Crossing firehose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

History: En. Sec. 107, Ch. 263, L. 1955; R.C.M. 1947, 32-21-110.

Cross-References

Obstructing a peace officer or other public servant, 45-7-302.

61-8-365. Putting refuse on highway prohibited. (1) No person shall throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, paper, or any other substance likely to injure any person, animal, or vehicle upon such highway.

(2) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(4) A person convicted of violating this section shall be fined not less than $50. Except for the minimum fine of $50 as provided in this subsection, the penalty provisions of 61-8-711 apply to this section.

History: En. Sec. 108, Ch. 263, L. 1955; R.C.M. 1947, 32-21-111; amd. Sec. 1, Ch. 510, L. 1979.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Public nuisance, 45-8-111.

61-8-366. Riding on fenders or running boards prohibited. Any person driving a vehicle shall not permit passengers to ride on the fenders or running boards, nor shall any passenger ride on the fenders or running boards of a vehicle.

History: En. Sec. 109, Ch. 263, L. 1955; R.C.M. 1947, 32-21-112.

61-8-367. Riding in housetrailers. No person or persons may occupy a housetrailer while it is being moved upon a public highway unless the trailer is of a semitrailer design where some part of its own weight and that of its cargo rests upon or is carried by its towing unit through the use of a fifth-wheel type trailer hitch mounted on no less than a one-half ton rated truck.

History: En. Sec. 109.1, Ch. 263, L. 1955, as added by Sec. 1, Ch. 167, L. 1957; amd. Sec. 1, Ch. 21, L. 1975; R.C.M. 1947, 32-21-112.1.

Cross-References

"Dolly or converter gear" defined, 61-1-113.

"Housetrailer" defined, 61-1-501.

61-8-368. Opening and closing vehicle doors. No person shall open any door of a motor vehicle unless and until it is reasonably safe to do so without interfering with the movement of other traffic, nor shall any person leave a door open on a side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

History: En. Sec. 109.2, Ch. 263, L. 1955, as added by Sec. 1, Ch. 167, L. 1957; R.C.M. 1947, 32-21-112.2; amd. Sec. 7, Ch. 450, L. 1983.

61-8-369. Shooting from or across road or highway right-of-way. Except as provided in 87-2-803(4), no person shall shoot any firearm from or across the right-of-way of any state or federal highway or county road.

History: En. Sec. 110, Ch. 263, L. 1955; amd. Sec. 1, Ch. 25, L. 1974; R.C.M. 1947, 32-21-113; amd. Sec. 1, Ch. 214, L. 1985; amd. Sec. 1, Ch. 416, L. 1985.

Cross-References

Creating a hazard, 45-8-113.

Hunting — general restrictions, 87-3-101.

Restrictions on use of motor vehicles while hunting, 87-3-125.

61-8-370. Securing of load — requirement. A person operating a loaded vehicle on a public highway for the purpose of transporting solid waste as defined in 75-10-203, except a commercial motor vehicle or a vehicle transporting unprocessed agricultural products, shall attach, cover, or otherwise secure the load sufficiently to prevent littering or creating an obstruction dangerous to the public traveling on the highway.

History: En. Sec. 1, Ch. 374, L. 1991.

61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions. (1) Except as provided in subsections (2) and (3), a person may not operate a motor vehicle, as defined in 61-1-102, or an off-highway vehicle, as defined in 23-2-801, below the ordinary high-water mark, as defined in 23-2-301, of class I or class II waters, as defined in 23-2-301, that occurs on state or federal lands or below the ordinary high-water mark of class I waters flowing through private lands, within that portion of the streambed that is covered with water.

(2) A motor vehicle or an off-highway vehicle may be operated below the ordinary high-water mark on state or federal lands on an established road or trail that enters or crosses a stream, but the stream crossing must be by the shortest practical or designated route to the road or trail on the opposite bank.

(3) The prohibition in subsection (1) does not apply to:

(a) off-highway or motor vehicle use that occurs on state or federal land that is designated for off-highway or motor vehicle use below the ordinary high-water mark if the use is in accordance with the requirements of the authorization;

(b) off-highway or motor vehicle use conducted on state or federal land pursuant to and in accordance with a specific written authorization from the appropriate land management agency for that use below the ordinary high-water mark; and

(c) operation of an off-highway vehicle by a nonambulatory person who is using the vehicle for recreational use, as defined in 23-2-301, as long as operation of the vehicle is prudent and minimizes destruction.

(4) The state may authorize the use of a motor vehicle or off-highway vehicle on state property below the ordinary high-water mark only when the state has determined that the use will have a minimal impact on the streambed and on the fish and wildlife ecology of the stream or river. Federal land management agencies are requested to apply the same criteria when authorizing use of federal land.

History: En. Sec. 1, Ch. 491, L. 1991.

61-8-372 through 61-8-379 reserved.

61-8-380. Funeral procession right-of-way — funeral lead vehicle and funeral escort vehicle in funeral procession. (1) Except as provided in subsection (4), pedestrians and operators of motor vehicles shall yield the right-of-way to a motor vehicle that is part of a funeral procession being led by a funeral lead vehicle or a funeral escort vehicle.

(2) After a funeral lead vehicle enters an intersection, the other vehicles in the funeral procession may continue to follow the funeral lead vehicle through the intersection despite any official traffic-control device, right-of-way provisions of this chapter, or local ordinance if the operator exercises reasonable care toward any other vehicle or pedestrian. When the funeral lead vehicle arrives at an intersection, it must comply with the requirements of any official traffic-control device, right-of-way provision of this chapter, and local ordinance.

(3) Except as provided in subsection (4), a driver of a funeral escort vehicle may direct the drivers of other vehicles in a funeral procession to proceed through an intersection or to make turns or other movements despite any official traffic-control device. The driver of a funeral escort vehicle may direct and control the drivers of vehicles not in a funeral procession, including those in or approaching an intersection, to stop, proceed, or make turns or other movements without regard to an official traffic-control device. Persons directing traffic shall comply with the provisions of 61-1-411. However, use of a funeral escort vehicle is not required.

(4) A vehicle in a funeral procession has the right-of-way at intersections regardless of official traffic-control devices provided the driver of that vehicle and the drivers of all vehicles in the funeral procession meet all the requirements of 61-1-413 through 61-1-415 and 61-8-380 through 61-8-384, except that an operator of a vehicle in a funeral procession shall yield the right-of-way to an approaching authorized emergency vehicle giving an audible or visual signal or when directed to do so by a highway patrol officer or police officer. This section does not relieve the driver of a vehicle in a funeral procession from the duty to drive with due regard for the safety of all persons using the highway.

History: **En. Sec. 5, Ch. 338, L. 1991.**

61-8-381. Equipment required for funeral vehicle — restricted light use. (1) A funeral escort vehicle or a funeral lead vehicle must be equipped with at least one lighted rotating or oscillating lamp exhibiting an amber light or lens visible under normal atmospheric conditions for a distance of 500 feet from the front of the vehicle.

(2) A funeral escort vehicle or a funeral lead vehicle may illuminate a rotating or oscillating amber light only when the vehicle is in use in a funeral procession.

History: **En. Sec. 6, Ch. 338, L. 1991.**

61-8-382. Driving in funeral procession. (1) A vehicle in a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practicable and safe.

(2) An ordinance, law, or regulation requiring that motor vehicles be operated to allow sufficient space between them to enable another vehicle to enter and occupy that space without danger does not apply to vehicles in a funeral procession.

(3) The driver of a motor vehicle in a funeral procession may not drive the vehicle at a speed greater than:

(a) 55 miles per hour on a highway where the posted speed limit is 55 miles per hour or more; or

(b) 5 miles per hour below the posted speed limit on other streets or roads.

(4) A vehicle being operated in a funeral procession must have its headlights and taillights illuminated.

(5) The turn signals must be flashing simultaneously as warning lights on a vehicle that:

(a) is the first vehicle in a funeral procession; or

(b) the driver has reason to believe is the last vehicle in a funeral procession.

History: **En. Sec. 7, Ch. 338, L. 1991.**

61-8-383. Vehicles not in funeral procession. The driver of a vehicle that is not part of a funeral procession may not:

(1) drive between the vehicles forming a funeral procession while they are in motion except when:

(a) authorized to do so by a police officer; or

(b) driving an authorized emergency vehicle emitting an audible or visible signal;

(2) join a funeral procession to secure the right-of-way granted by 61-8-380;

(3) pass a funeral procession on a multiple-lane highway on the funeral procession's right side unless the funeral procession is in the farthest left lane;

(4) enter an intersection, even if the driver is facing a green traffic-control signal, when a funeral procession being conducted in compliance with 61-1-413 through 61-1-415 and 61-8-380 through 61-8-384 is proceeding through a red traffic-control signal at that intersection as permitted by 61-8-380 unless the driver can do so without crossing the path of the funeral procession. If the red signal changes to green while the funeral procession is within the intersection, the driver of a vehicle facing a green signal may proceed subject to the right-of-way of a vehicle participating in a funeral procession.

History: En. Sec. 8, Ch. 338, L. 1991.

61-8-384. Liability. The operator of a vehicle in a funeral procession, including a lead vehicle or an escort vehicle, is not negligent if he operates the vehicle in accordance with the requirements of 61-1-413 through 61-1-415 and 61-8-380 through 61-8-384. When no negligence exists on the part of the operator of a vehicle in a funeral procession, none may be imputed to the funeral director or mortician organizing the procession, to the agent of the funeral director or mortician, or to a member of a local law enforcement agency acting as the agent, with or without compensation, of the funeral director or mortician.

History: En. Sec. 9, Ch. 338, L. 1991.

Part 4

Driving Under Influence of Alcohol or Drugs

61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714 and 61-8-723 for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a vehicle upon the ways of this state open to the public;

(b) a dangerous drug to drive or be in actual physical control of a vehicle within this state;

(c) any other drug to drive or be in actual physical control of a vehicle within this state; or

(d) alcohol and any dangerous or other drug to drive or be in actual physical control of a vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use alcohol or such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

(4) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person at the time alleged, as shown by analysis of the person's blood, urine, or breath, shall give rise to the following inferences:

(a) If there was at that time an alcohol concentration of 0.05 or less, it may be inferred that the person was not under the influence of alcohol.

(b) If there was at that time an alcohol concentration in excess of 0.05 but less than 0.10, that fact shall not give rise to any inference that the person was or was not under the influence of alcohol but such fact may be considered with other competent evidence in determining the guilt or innocence of the person.

(c) If there was at that time an alcohol concentration of 0.10 or more, it may be inferred that the person was under the influence of alcohol. The inference is rebuttable.

(5) The provisions of subsection (4) do not limit the introduction of any other competent evidence bearing upon the issue of whether the person was under the influence of alcohol, drugs, or a combination of the two.

(6) Each municipality in this state is given authority to enact 61-8-406, 61-8-408, 61-8-714, 61-8-722, and subsections (1) through (5) of this section, with the word "state" in 61-8-406 and subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided.

(7) Absolute liability as provided in 45-2-104 will be imposed for a violation of this section.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(part); amd. Sec. 69, Ch. 421, L. 1979; amd. Sec. 2, Ch. 659, L. 1983; amd. Sec. 5, Ch. 698, L. 1983; amd. Sec. 2, Ch. 99, L. 1985; amd. Sec. 2, Ch. 350, L. 1987; amd. Sec. 3, Ch. 484, L. 1987; amd. Sec. 1, Ch. 612, L. 1987; amd. Sec. 1, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted reference to inferred or inference for reference to presumed or presumption; in (1)(b) substituted "dangerous" for "narcotic"; in (1)(d) inserted "dangerous or other"; in (4), in middle of sentence, substituted "person" for "person's blood", before "analysis" deleted "chemical", and after "or breath" deleted "or other bodily substance"; in (4)(a) and (4)(c) substituted "may" for "shall"; in (5) inserted reference to drugs or combination of drugs and alcohol; and made minor changes in style.

Cross-References

Municipal traffic and motor vehicle regulation, 7-14-4102, 7-14-4103.

Responsibility — intoxicated or drugged condition, 45-2-203.

Negligent vehicular assault, 45-5-205.

Scheduling of dangerous drugs, Title 50, ch. 32, part 2.

Criminal laws limitation, 53-24-106.

Definition of "vehicle", 61-1-103.

Offenses furnishing ground for suspension or revocation of license, 61-5-405.

Definition of "ways of this state open to the public", 61-8-101.

Operation of a motor vehicle by a person with blood alcohol concentration of 0.10 or more, 61-8-406.

Multiple convictions prohibited, 61-8-408.

Penalty for driving while intoxicated, 61-8-714.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

Habitual traffic offenders, Title 61, ch. 11, part 2.

61-8-402. Blood, breath, or urine tests. (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test designated by the arresting officer as provided in subsection (1), none shall be given, but the officer shall, on behalf of the department, immediately seize his driver's license. The peace officer shall forward the license to the department, along with a sworn report that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a test:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test.

(7) All such suspensions are subject to review as hereinafter provided.

History: En. Sec. 1, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.1; amd. Sec. 1, Ch. 103, L. 1981; amd. Sec. 1, Ch. 602, L. 1983; amd. Sec. 3, Ch. 659, L. 1983; amd. Sec. 8, Ch. 698, L. 1983; amd. Sec. 3, Ch. 99, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 789, L. 1991.

1991

Compiler's Comments

1991 Amendment: Throughout section inserted "drugs, or a combination of the two"; in first sentence of (1), in (3), and in (5), before "test", deleted "chemical"; in first sentence of (1) inserted reference to actual physical control, substituted "any measured amount or detected presence of alcohol in his body" for "the alcoholic content of his blood", and after "driving or" inserted "for being"; in (3) and (4), before "driver" and "driver's", deleted "resident"; in (6), at beginning, deleted "Like refusal by", after "nonresident" inserted "driver's license seized under this section", substituted "sent" for "subject to suspension", after "department" deleted "in like manner, and the same temporary driving permit shall be issued to nonresidents", and inserted final phrase referring to a report sent to licensing authority of nonresident's home state; and made minor changes in style.

Cross-References

Basis of opinion testimony by experts, Rule 703, M.R.Ev. (see Title 26, ch. 10).

Definition of "vehicle", 61-1-103.

License reinstatement fee to fund county drinking and driving prevention programs, 61-2-107.

Authority of Department of Justice to suspend license or driving privilege, 61-5-206.

Definition of "ways of this state open to the public", 61-8-101.

61-8-403. Right of appeal to court. The department shall immediately notify any person whose license or privilege to drive has been suspended or revoked, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person resides or in the district court in the county in which this arrest was made. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 10 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided.

History: En. Sec. 2, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.2(a); amd. Sec. 2, Ch. 103, L. 1981; amd. Sec. 2, Ch. 602, L. 1983; amd. Sec. 4, Ch. 659, L. 1983; amd. Sec. 9, Ch. 698, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 3, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: In second to last sentence inserted reference to drugs or combination of drugs and alcohol.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

District Court jurisdiction, Title 3, ch. 5, part 3.

County Attorney — duties related to state matters, 7-4-2716.

Definition of "ways of this state open to the public", 61-8-101.

61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged, as shown by an analysis of his blood, breath, or urine, is admissible; and

1991

(b) a report of the facts and results of any test of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath test was performed by a person certified by the forensic sciences division of the department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) the test was on a blood sample, the person withdrawing the blood was competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two.

History: En. Sec. 2, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.2(b) thru (d); amd. Sec. 3, Ch. 103, L. 1981; amd. Sec. 5, Ch. 659, L. 1983; amd. Sec. 10, Ch. 698, L. 1983; amd. Sec. 4, Ch. 99, L. 1985; amd. Sec. 4, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a) substituted "any measured amount or detected presence of alcohol in the person" for "the amount of alcohol in the person's blood" and after "as shown by" deleted "a chemical"; in (1)(b), before "test", deleted "chemical"; in (1)(b)(i), at beginning after "the breath", substituted "test was performed by a person certified by the forensic sciences division of the department to administer breath tests" for "analysis report was prepared and verified by the person who performed the test"; deleted former (1)(b)(ii) providing admissibility if report was prepared according to applicable Department rules; at end of (2) and (3) inserted reference to drugs or combination of drugs and alcohol; and made minor changes in style.

Cross-References

Admissibility of evidence, Rules 104 and 105, M.R.Ev. (see Title 26, ch. 10).

Responsibility — intoxicated or drugged condition, 45-2-203.

Definition of "vehicle", 61-1-103.

Definition of "ways of this state open to the public", 61-8-101.

61-8-405. Administration of tests. (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining any measured amount or detected presence of alcohol in the person. This limitation does not apply to the taking of breath or urine specimens.

(2) The person may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining any measured amount or detected presence of alcohol in the person at the time alleged, as shown by analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer must be made available to him or his attorney.

1991

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(5) If a test given under 61-8-402 or 61-8-806 is a test of urine, the person tested must be given such privacy in the taking of the urine specimen as will ensure the integrity of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

History: En. Sec. 3, Ch. 131, L. 1971; R.C.M. 1947, 32-2142.3; amd. Sec. 4, Ch. 103, L. 1981; amd. Secs. 1, 13, Ch. 503, L. 1985; amd. Sec. 14, Ch. 378, L. 1989; amd. Sec. 5, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "any measured amount or detected presence of alcohol in the person" for "alcoholic content"; in (2) substituted "any measured amount or detected presence of alcohol in the person" for "the amount of alcohol in his blood" and before "analysis" deleted "chemical"; in (5), before "test of urine", deleted "chemical" and substituted "integrity" for "accuracy"; in (6), before "tests", deleted "blood alcohol"; and made minor changes in style.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

General provisions governing discovery, Rule 26, M.R.Civ.P. (see Title 25, ch. 20).

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of nurses, Title 37, ch. 8, part 4.

Division of Forensic Science, Title 44, ch. 3, part 1.

61-8-406. Operation of vehicle by a person with alcohol concentration of 0.10 or more. It is unlawful and punishable as provided in 61-8-722 and 61-8-723 for any person to drive or be in actual physical control of a vehicle upon the ways of this state open to the public while the person's alcohol concentration, as shown by analysis of the person's blood, breath, or urine, is 0.10 or more. Absolute liability as provided in 45-2-104 will be imposed for a violation of this section.

History: En. Sec. 4, Ch. 698, L. 1983; amd. Sec. 5, Ch. 99, L. 1985; amd. Sec. 3, Ch. 350, L. 1987; amd. Sec. 4, Ch. 484, L. 1987; amd. Sec. 6, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: Inserted "as shown by analysis of the person's"; and made minor changes in style.

Cross-References

Definition of "vehicle", 61-1-103.

Revocation, suspension, and cancellation of licenses, Title 61, ch. 5, part 2.

Definition of "ways of the state open to the public", 61-8-101.

Operation of motor vehicle by person under the influence of alcohol or drugs, 61-8-401.

Penalty for operation of a motor vehicle by a person under the influence of alcohol or drugs, 61-8-714.

61-8-407. Definition of alcohol concentration. For purposes of 16-6-305, 61-8-401, and 61-8-406, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine.

History: En. Sec. 7, Ch. 698, L. 1983; amd. Sec. 6, Ch. 448, L. 1989.

Cross-References

Chemical blood, breath, or urine tests, 61-8-402.

61-8-408. Multiple convictions prohibited. When the same acts may establish the commission of an offense under both 61-8-401 and 61-8-406, a person charged with such conduct may be prosecuted for a violation of both 61-8-401 and 61-8-406. However, he may only be convicted of an offense under either 61-8-401 or 61-8-406.

History: En. Sec. 6, Ch. 698, L. 1983.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Part 5

Pedestrian Traffic

Part Cross-References

Pedestrian malls, Title 7, ch. 14, part 47.

Duty and civil liability of pedestrian or driver approaching blind person, 49-4-216.

Penalty for violation of duty or unauthorized use of cane, 49-4-217.

"Pedestrian" defined, 61-1-308.

61-8-501. Pedestrians subject to traffic regulations. (1) Pedestrians shall be subject to traffic-control signals at intersections as provided in 61-8-207 unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this part.

(2) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

History: En. Sec. 73, Ch. 263, L. 1955; R.C.M. 1947, 32-2176.

Cross-References

Municipal ordinances, 7-5-4201.

"Crosswalk" defined, 61-1-209.

"Traffic-control signal" defined, 61-1-402.

"Business district" defined, 61-1-408.

61-8-502. Pedestrians' right-of-way in crosswalk. (1) When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in 61-8-503(2).

(2) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(3) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965; R.C.M. 1947, 32-2177.

Cross-References

School safety patrols, 20-1-408.
"Crosswalk" defined, 61-1-209.
"Right-of-way" defined, 61-1-406.
When overtaking on right is permitted, 61-8-324.

61-8-503. Crossing at other than crosswalks. (1) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(2) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(3) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

History: En. Sec. 75, Ch. 263, L. 1955; R.C.M. 1947, 32-2178.

Cross-References

"Crosswalk" defined, 61-1-209.
"Intersection" defined, 61-1-212.
"Traffic-control signal" defined, 61-1-402.
"Right-of-way" defined, 61-1-406.

61-8-504. Drivers to exercise due care. Notwithstanding the foregoing provisions of this part, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or with any person operating a bicycle upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

History: En. Sec. 76, Ch. 263, L. 1955; R.C.M. 1947, 32-2179; amd. Sec. 8, Ch. 450, L. 1983.

Cross-References

"Bicycle" defined, 61-1-123.
Horns and warning devices, 61-9-401.

61-8-505. Pedestrians to use right half of crosswalk. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

History: En. Sec. 77, Ch. 263, L. 1955; R.C.M. 1947, 32-2180.

Cross-References

"Crosswalk" defined, 61-1-209.

61-8-506. Pedestrians on roadways. (1) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(2) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

History: En. Sec. 78, Ch. 263, L. 1955; R.C.M. 1947, 32-2181.

Cross-References

"Roadway" defined, 61-1-206.

"Sidewalk" defined, 61-1-208.

61-8-507. Pedestrian soliciting rides or business. (1) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(2) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

History: En. Sec. 79, Ch. 263, L. 1955; R.C.M. 1947, 32-2182.

61-8-508. Intoxicated pedestrian. No person shall walk upon or along the highway while under the influence of intoxicating liquor.

History: En. Sec. 80, Ch. 263, L. 1955; R.C.M. 1947, 32-2183.

Cross-References

Intoxication — criminal laws limitation, 53-24-106.

Public intoxication not a criminal offense, 53-24-107.

61-8-509. Pedestrian's right-of-way on sidewalks. The driver of a vehicle crossing a sidewalk shall yield the right-of-way to any pedestrian and all other traffic on the sidewalk.

History: En. Sec. 12, Ch. 450, L. 1983.

Cross-References

"Sidewalk" defined 61-1-208.

"Right-of-way" defined, 61-1-406.

Part 6

Bicycle Traffic

Part Cross-References

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

"Bicycle" defined, 61-1-123.

61-8-601. Effect of regulations. (1) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this part.

(2) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

History: **En. Sec. 81, Ch. 263, L. 1955; R.C.M. 1947, 32-2184.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-8-602. Traffic laws applicable to persons operating bicycles. Every person operating a bicycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle by chapter 7, this chapter, and chapter 9 except as to special regulations in this part and except as to those provisions of chapter 7, this chapter, and chapter 9 which by their very nature can have no application.

History: **En. Sec. 82, Ch. 263, L. 1955; R.C.M. 1947, 32-2185; amd. Sec. 9, Ch. 450, L. 1983.**

61-8-603. Riding on bicycles. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

History: **En. Sec. 83, Ch. 263, L. 1955; R.C.M. 1947, 32-2186.**

61-8-604. Clinging to vehicles. No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any vehicle upon a roadway, but a bicycle trailer or bicycle semitrailer may be attached to a bicycle if that trailer or semitrailer has been designed for such attachment.

History: **En. Sec. 84, Ch. 263, L. 1955; R.C.M. 1947, 32-2187; amd. Sec. 10, Ch. 450, L. 1983.**

61-8-605. Riding on roadways. (1) As used in this section, "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder.

(2) A person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable except when:

(a) overtaking and passing another vehicle proceeding in the same direction;

(b) preparing for a left turn at an intersection or into a private road or driveway; or

(c) necessary to avoid a condition that makes it unsafe to continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(3) A person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as close to the left side of the roadway as practicable.

(4) Persons riding bicycles upon a roadway shall ride in single file except when:

(a) riding on paths or parts of roadways set aside for the exclusive use of bicycles;

(b) overtaking and passing another bicycle;

(c) riding on a paved shoulder or in a parking lane, in which case the persons may ride two abreast; or

(d) riding within a single lane on a laned roadway with at least two lanes in each direction, in which case the persons may ride two abreast if they do not impede the normal and reasonable movement of traffic more than they would otherwise impede traffic by riding single file and in accordance with the provisions of this chapter.

(5) A bicycle, as defined in 61-1-123(2), is excluded from the provisions of subsections (2) and (3).

History: En. Sec. 85, Ch. 263, L. 1955; amd. Sec. 1, Ch. 110, L. 1975; R.C.M. 1947, 32-2188; amd. Sec. 8, Ch. 508, L. 1979; amd. Sec. 11, Ch. 450, L. 1983; amd. Sec. 2, Ch. 169, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted definition of roadway; deleted former (4) that read: "(4) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. A person riding a bicycle defined in 61-1-123(2) is excluded from the provisions of this subsection when such bicycle is prohibited from using such paths"; in (5) changed subsection references; and made minor change in style.

Cross-References

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

"Roadway" defined, 61-1-206.

Bicycle turn procedures at intersection, 61-8-333.

61-8-606. Carrying articles. No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handle bars.

History: En. Sec. 86, Ch. 263, L. 1955; R.C.M. 1947, 32-2189.

61-8-607. Lamps and other equipment on bicycles. (1) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to rear-facing reflectors required by this section.

(2) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front-facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.

(3) Every bicycle when in use at nighttime shall be equipped with either tires with retroflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 millimeters (3 inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.

(4) Reflectors required by this section shall be of a type approved by the department.

(5) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(6) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange in color.

History: En. Sec. 87, Ch. 263, L. 1955; amd. Sec. 1, Ch. 351, L. 1975; R.C.M. 1947, 32-2190; amd. Sec. 1, Ch. 503, L. 1985.

61-8-608. Bicycles on sidewalks. (1) A person operating a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing any pedestrian.

(2) A person may not ride a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk where the use of a bicycle is prohibited by official traffic-control devices.

(3) Except as provided in subsections (1) and (2), a person operating a vehicle by human power upon and along a sidewalk or across a roadway upon and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances.

History: En. Sec. 13, Ch. 450, L. 1983.

Cross-References

Footpaths and bicycle trails, Title 60, ch. 3, part 3.

"Sidewalk" defined, 61-1-208.

61-8-609. Bicycle racing — when lawful. (1) Bicycle racing on a highway is prohibited except as authorized in this section.

(2) Bicycle racing on a highway is lawful when a racing event is approved by state or local authorities on any highway under their respective jurisdictions. Approval of bicycle highway racing events will be granted only under conditions that assure reasonable safety for all race participants, spectators, and other highway users and that prevent unreasonable interference with traffic flow.

(3) By agreement with the approving authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable if traffic control is adequate to assure the safety of all highway users.

History: En. Sec. 1, Ch. 75, L. 1987.

Part 7

Enforcement — Penalties

61-8-701. Charging violations. In every charge of a violation of any speed regulation in this chapter the complaint, and also the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location.

History: En. Sec. 47, Ch. 263, L. 1955; R.C.M. 1947, 32-2150.

Cross-References

Issuance of arrest warrant upon complaint, 46-6-201.

Summons, Title 46, ch. 6, part 3.

Speed restrictions — basic rule, 61-8-303.

61-8-702. Use of radar — evidence admissible. The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

History: En. Sec. 1, Ch. 120, L. 1959; R.C.M. 1947, 32-2150.1.

Cross-References

Admissibility of evidence, Rules 104 and 105, M.R.Ev. (see Title 26, ch. 10).

61-8-703. Arrest without a warrant in radar cases. (1) The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform or displays his badge of authority and has either:

(a) observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

(b) received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

(2) The arrest without a warrant of any such driver must be made immediately after such observation or radio message and as the result of uninterrupted pursuit.

History: En. Sec. 2, Ch. 120, L. 1959; R.C.M. 1947, 32-2150.2.

Cross-References

Highway Patrol — procedure for arrests, Title 44, ch. 1, part 11.

Circumstances in which a peace officer may make an arrest, 46-6-210.

Manner of arrest without a warrant, 46-6-312.

61-8-704. Erection of signs. (1) No operator of a motor vehicle may be arrested under 61-8-703 unless signs have been placed at or near the state line on the primary highway system, outside towns or cities having over 2,500 population, and outside county seats on the primary highways to indicate the legal rate of speed.

(2) Any municipality which uses radio microwaves or other electrical device for law enforcement purposes shall erect and maintain appropriate signs giving notice of such use at a conspicuous place at or near the corporate limits of the municipality, upon each state highway and arterial street or highway entering the municipality, and at such other places as may be deemed necessary by the municipal authorities for the information of the traveling public.

(3) Signs giving notice that the speed of vehicles may be measured by radio microwaves or other electrical device shall be placed as required for speed signs in subsection (1) above. However, the absence of such signs shall not in itself invalidate an otherwise proper arrest.

History: En. Sec. 3, Ch. 120, L. 1959; amd. Sec. 1, Ch. 205, L. 1974; R.C.M. 1947, 32-2150.3.

Cross-References

Department of Transportation to sign all state highways, 61-8-203.

Lower speed limits, 61-8-306.

When local authorities may and shall alter limits, 61-8-310.

61-8-705. Officers or highway patrol officers authorized to remove illegally stopped vehicles. (1) Whenever any police officer or highway patrol officer finds a vehicle standing upon a highway in violation of any of the provisions of 61-8-353 through 61-8-355, such officer or highway patrol officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

(2) Whenever any police officer or highway patrol officer finds a vehicle unattended upon any bridge or roadway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer or highway patrol officer is hereby authorized to provide for the removal of such vehicle pursuant to Title 61, chapter 12, part 4, except that the time limits imposed in 61-12-401 do not apply to removal under this subsection.

History: En. Sec. 97, Ch. 263, L. 1955; R.C.M. 1947, 32-21-100; amd. Sec. 1, Ch. 71, L. 1981; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Prohibition against parking or leaving vehicles on public property, 61-8-356.

61-8-706. Removal of unauthorized sign. (1) An unauthorized sign, emblem, marker, or traffic-control device or portion thereof encroaching into, over, or upon a right-of-way of a state highway or controlled-access highway is a public nuisance, and the department may remove it or cause it to be removed without notice and without liability for the removal.

(2) Every sign, signal, or marking prohibited by 61-8-210 is hereby declared to be a public nuisance and the authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

History: (1)En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; Sec. 32-2134, R.C.M. 1947; (2)En. Sec. 37, Ch. 263, L. 1955; Sec. 32-2140, R.C.M. 1947; R.C.M. 1947, 32-2134(f), 32-2140(e).

Cross-References

Public nuisances, Title 27, ch. 30, part 2.

Highway encroachments, Title 60, ch. 6.

Display of unauthorized signs, signals, or markings, 61-8-210.

61-8-707 through 61-8-710 reserved.

61-8-711. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony by this chapter or other law of this state.

(2) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not less than $10 or more than $100 or by imprisonment for not more than 10 days. For a second conviction within 1 year thereafter, the person shall be punished by a fine of not less than $25 or more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

(3) On failure of payment of a fine, the offender in case of a misdemeanor shall be imprisoned in the county jail in the county in which the offense was committed, and the imprisonment shall be computed upon the basis of 1 day's incarceration for each $25 of the fine.

(4) Upon conviction, the court costs or any part thereof may be assessed against the defendant in the discretion of the court.

History: En. Sec. 154, Ch. 263, L. 1955; R.C.M. 1947, 32-21-157; amd. Sec. 70, Ch. 421, L. 1979; amd. Sec. 1, Ch. 128, L. 1987; amd. Sec. 1, Ch. 109, L. 1991.

Compiler's Comments

1991 Amendment: In (3) increased basis of fine for 1 day of incarceration from $10 to $25.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Payment of costs by defendant, 46-18-232.

Execution of a fine, 46-19-102.

Putting refuse on highway prohibited, 61-8-365.

Violation of 61-8-304 not a misdemeanor, 61-8-718.

61-8-712. Penalty for erection of unauthorized sign. The erection of a sign, emblem, marker, or traffic-control device in violation of 61-8-203 is a misdemeanor, punishable by a fine of not less than $25 or more than $300.

History: En. Sec. 31, Ch. 263, L. 1955; amd. Sec. 1, Ch. 224, L. 1959; amd. Sec. 53, Ch. 316, L. 1974; R.C.M. 1947, 32-2134(e).

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Department of Transportation to sign all state highways, 61-8-203.

61-8-713. Injury to or removal of sign or marker a misdemeanor — penalty. (1) Every person who maliciously injures, defaces, damages, or removes any sign, signal, or marker, either temporarily or permanently erected on the right-of-way of any secondary, state, or interstate highway for warning, instruction, or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of $250 or by imprisonment in the county jail for a period not exceeding 60 days or by both such fine and imprisonment in the discretion of the court. This section applies to secondary, state, or interstate highways which are completed and to secondary, state, or interstate highways which are under construction or repair.

(2) No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon or any part thereof.

History: (1)En. Sec. 1, Ch. 184, L. 1965; Sec. 32-2134.1, R.C.M. 1947; (2)En. Sec. 38, Ch. 263, L. 1955; Sec. 32-2141, R.C.M. 1947; R.C.M. 1947, 32-2134.1, 32-2141.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Criminal mischief, 45-6-101.

Classification — highways and roads, 60-1-201.

"Official traffic-control devices" defined, 61-1-403.

"Railroad sign" or "signal" defined, 61-1-404.

Reward for information on injury to or removal of sign or marker, 61-8-204.

Posting of penalties along highways, 61-8-205.

61-8-714. Penalty for driving under influence of alcohol or drugs. (1) Except as provided in subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) Except as provided in subsection (7), on the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a

forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

History: En. Sec. 39, Ch. 263, L. 1955; amd. Sec. 1, Ch. 194, L. 1957; amd. Sec. 3, Ch. 201, L. 1957; amd. Sec. 1, Ch. 109, L. 1961; amd. Sec. 1, Ch. 132, L. 1971; amd. Sec. 1, Ch. 289, L. 1977; amd. Sec. 1, Ch. 430, L. 1977; R.C.M. 1947, 32-2142(3), (4); amd. Sec. 1, Ch. 56, L. 1979; amd. Sec. 1, Ch. 301, L. 1979; amd. Sec. 1, Ch. 451, L. 1981; amd. Sec. 1, Ch. 433, L. 1983; amd. Sec. 1, Ch. 242, L. 1985; amd. Sec. 2, Ch. 476, L. 1989; amd. Sec. 1, Ch. 101, L. 1991; amd. Sec. 1, Ch. 102, L. 1991; amd. Sec. 11, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 7, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: Chapter 101 throughout section inserted "Except as provided in subsection (7)" and before "sentence" deleted "jail"; inserted (7) providing that sentences of imprisonment for DUI offenses may be served in facilities other than county jails, requiring defendants financially able to pay for costs of imprisonment, and allowing a prerelease center to accept or reject a defendant referred by the sentencing court; and made minor changes in style.

Chapter 102 in (4), in second to last sentence after "information course", deleted "and treatment program" and after "subsection" inserted "and the treatment is provided by a certified chemical dependency counselor"; and made minor changes in style.

Chapter 105 throughout section, before "sentence", substituted "imprisonment" for "jail"; at beginning of (1) inserted exception clause; inserted (8) providing for imprisonment under home arrest; and made minor change in style.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 789 in second sentence of (5) substituted "sentencing" for "this section".

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Responsibility — intoxicated or drugged condition, 45-2-203.
Form of sentence, Title 46, ch. 18, part 2.
Criminal laws limitation, 53-24-106.
Powers and duties of department — instructors and courses concerning chemical dependency program, 53-24-204.
Treatment of alcoholics and intoxicated persons, Title 53, ch. 24, part 3.
Driver improvement program, Title 61, ch. 2, part 3.
Persons under the influence of alcohol or drugs, 61-8-401.

61-8-715. Reckless driving — penalty. (1) A person convicted of reckless driving under 61-8-301(1)(a) or 61-8-301(1)(c) shall be punished upon a first conviction by imprisonment for a period of not more than 90 days or by fine of not less than $25 or more than $300 or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days or more than 6 months or by a fine of not less than $50 or more than $500 or by both such fine and imprisonment.

(2) A person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added at the discretion of the court a fine of not less than $300 or more than $500. On a second or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than $500 or more than $1,000.

History: En. Sec. 40, Ch. 263, L. 1955; amd. Sec. 4, Ch. 201, L. 1957; amd. Sec. 1, Ch. 287, L. 1977; R.C.M. 1947, 32-2143(2), (3); amd. Sec. 3, Ch. 221, L. 1985.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Reckless driving, 61-8-301.

61-8-716. Careless driving — penalty. A person violating the provisions of 61-8-302 is guilty of the offense of careless driving and shall be punishable as provided in 61-8-711.

History: En. 32-2143.4 by Sec. 2, Ch. 294, L. 1977; R.C.M. 1947, 32-2143.4.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

61-8-717. Penalty for unauthorized drag racing. Any person convicted for violation of 61-8-308 shall be guilty of a misdemeanor and shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county or city jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967; R.C.M. 1947, 32-2143.2.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Permission of authorities to hold speed contest, 61-8-308.

61-8-718. Penalty for violation of fuel conservation speed limit. (1) A person violating the speed limit imposed pursuant to 61-8-304 is guilty of the offense of unnecessary waste of a resource and upon conviction shall be fined $5, and no jail sentence may be imposed. Bond for this offense shall be $5.

(2) A violation of 61-8-304 is not a misdemeanor pursuant to 45-2-101, 61-8-104, or 61-8-711.

History: **En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975; R.C.M. 1947, 32-2144.6(1); amd. Sec. 71, Ch. 421, L. 1979; amd. Sec. 3, Ch. 681, L. 1983; amd. Sec. 38, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Procedure when patrol officer accepts bail, 44-1-1102.

Check in lieu of cash, 44-1-1103.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-8-719. Penalty for leaving vehicle on public property. Any person or persons violating the provisions of 61-8-356 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $300 or by imprisonment in the county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: **En. Sec. 9, Ch. 288, L. 1967; R.C.M. 1947, 53-909(part).**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Removal and sale of abandoned vehicles, Title 61, ch. 12, part 4.

61-8-720. Penalty. Any person who violates any of the provisions of 61-8-331(2) is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than $5 or more than $100 or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: **En. Sec. 10-111, Ch. 197, L. 1965; R.C.M. 1947, 32-4311(2).**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-8-721. Repealed. Sec. 99, Ch. 421, L. 1979.

History: **En. 75-7007 by Sec. 284, Ch. 5, L. 1971; R.C.M. 1947, 75-7007(part).**

61-8-722. Penalty for driving with excessive alcohol concentration. (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each coun-

selor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10.

History: En. Sec. 11, Ch. 698, L. 1983; amd. Sec. 2, Ch. 242, L. 1985; amd. Sec. 2, Ch. 101, L. 1991; amd. Sec. 12, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 8, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: Chapter 101 in (1), (2), and (3) inserted "Except as provided in subsection (7)"; inserted (7) providing that sentences of imprisonment for DUI offenses may be served in facilities other than county jails, requiring defendants financially able to pay for costs of imprisonment, and allowing a prerelease center to accept or reject a defendant referred by the sentencing court; and made minor changes in style.

Chapter 105 inserted (8) providing for imprisonment under home arrest; and made minor changes in style.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 789 in second sentence of (6) substituted "sentencing" for "this section".

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Powers and duties of department — instructors and courses concerning chemical dependency program, 53-24-204.

Treatment of alcoholics and intoxicated persons, Title 53, ch. 24, part 3.

Driver improvement program, Title 61, ch. 2, part 3.

61-8-723. Offenses committed by persons under the age of eighteen. A person under 18 years of age who is convicted of an offense under this title shall not be punished by incarceration, but shall be punished by:

(1) a fine not to exceed the fine that could be imposed on him if he were an adult, provided that such person may not be imprisoned for failure to pay such fine;

(2) revocation of his driver's license by the court or suspension of the license for a period set by the court;

(3) impoundment by a law enforcement officer designated by the court of the motor vehicle operated by the person for a period of time not exceeding 60 days if the court finds that he either owns the vehicle or is the only person who uses the vehicle; or

(4) any combination of subsections (1) through (3).

History: En. Sec. 1, Ch. 484, L. 1987.

Part 8

Commercial Motor Vehicle Safety

Part Cross-References

Commercial motor vehicle defined, 61-1-134.

Commercial vehicle operator's endorsement defined, 61-1-135.

Licensing provisions, Title 61, ch. 5, part 1.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-8-801. Purpose. (1) The purpose of this part is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are determined to be not qualified.

(2) To fulfill this purpose, the legislature intends that this part:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial motor vehicle operator's endorsements with federal regulations based on Public Law 99-570, "Commercial Motor Vehicle Safety Act of 1986".

History: En. Sec. 1, Ch. 378, L. 1989.

61-8-802. Suspension of commercial vehicle operator's endorsement — disqualification. (1) The department shall suspend the commercial vehicle operator's endorsement of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law.

(2) A commercial vehicle operator's endorsement suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations.

(3) A person whose commercial vehicle operator's endorsement is suspended under this section due to disqualification:

(a) may appeal the suspension as provided in 61-5-211; and

(b) may not operate a commercial vehicle until the suspension is lifted and his commercial vehicle operator's endorsement is restored.

History: En. Sec. 2, Ch. 378, L. 1989.

61-8-803. Suspension of commercial vehicle operator's endorsement — serious traffic violations. If a commercial motor vehicle operator's record shows that he has been convicted of a serious traffic violation as defined in federal regulations, the department shall suspend the commercial vehicle operator's endorsement:

(1) for 60 days if the operator was convicted of two hazardous moving violations within 3 years; or

(2) for 120 days if the operator was convicted of three hazardous moving violations within 3 years.

History: En. Sec. 3, Ch. 378, L. 1989.

61-8-804. Suspension of commercial vehicle operator's endorsement — felony involving a controlled substance while driving a commercial vehicle. If the department receives information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall suspend his commercial vehicle operator's endorsement for life.

History: En. Sec. 4, Ch. 378, L. 1989.

61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or more — hearing. (1) A person whose alcohol concentration is 0.04 or more while he drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of his commercial vehicle operator's endorsement. If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while his alcohol concentration was 0.04 or more, the department shall suspend the driver's commercial vehicle operator's endorsement:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department, unless a restricted license or endorsement is allowed by federal rules governing commercial drivers.

(2) A peace officer who determines that a commercial motor vehicle operator has any measured amount or detected presence of alcohol in his body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement is suspended under this section. The person has the right to file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while his alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section.

History: En. Sec. 5, Ch. 378, L. 1989; amd. Sec. 3, Ch. 563, L. 1991; amd. Sec. 9, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 563 in (1)(b) increased the suspension period from 10 years to life and at end inserted "unless a restricted license or endorsement is allowed by federal rules governing commercial drivers"; and in (2) substituted "operator has any measured amount or detected presence of alcohol in his body while operating a commercial motor vehicle" for "operator's blood alcohol concentration is 0.04 or more".

Chapter 789 in two places in (1), in (2) (rendered void by Ch. 563), and in two places in (4), before "alcohol concentration", deleted "blood"; and in (4), in second sentence after "person", deleted "suspended".

Cross-References

Driving under the influence, 61-8-401, 61-8-406.

61-8-806. Blood, breath, or urine tests of commercial vehicle operators — procedure — suspension. (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a test of his blood, breath, or urine for the purpose of determining any measured amount of alcohol in his body if he is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while his blood alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's driver's license showing the commercial vehicle operator's endorsement and forward the license to the department, along with a sworn report that he had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having an alcohol concentration of 0.04 or more and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for life, with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers.

(6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be given a temporary driving permit as provided in subsection (4).

History: En. Sec. 6, Ch. 378, L. 1989; amd. Sec. 4, Ch. 563, L. 1991; amd. Sec. 10, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 563 in (5)(b) increased suspension period from 10 years to life and at end inserted "unless allowed by federal rules governing commercial drivers".

Chapter 789 throughout section, before "test", deleted "chemical" and before "alcohol concentration" deleted "blood"; in (1) substituted "any measured amount of alcohol in his body" for "the alcohol content of his blood"; in (6) substituted "must be given" for "may receive"; and made minor changes in style.

Cross-References

Chemical tests of suspected drunk drivers, 61-8-402.

61-8-807. Administration of tests. (1) Tests required under this part must be administered as provided in 61-8-405.

(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise be administered by the department if they have been officially trained

and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 C.F.R. part 383.75.

History: En. Sec. 8, Ch. 378, L. 1989.

Cross-References

Administration of chemical drunk driving tests, 61-8-405.

61-8-808. Right of appeal of court. The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement has been suspended under the provisions of 61-8-806, and the person may, within 30 days after receipt of notification, file a petition for a hearing on the matter in the district court in the county where the person resides or in the district court in the county where the finding of refusal was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had a blood alcohol concentration of 0.04 or more, whether the person was ordered to submit to a test, and whether the person refused to submit to the test. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this part.

History: En. Sec. 7, Ch. 378, L. 1989.

Cross-References

Appeal from suspension or revocation of driver's license for failure to take chemical drunk driving test, 61-8-403.

61-8-809. Leaving the scene of an accident involving commercial motor vehicle — suspension. Upon receipt of information that a commercial motor vehicle operator has been convicted of an offense under 61-7-103, 61-7-104, or 61-7-106 while operating a commercial motor vehicle, the department shall suspend the driver's commercial motor vehicle endorsement as provided in 61-8-811.

History: En. Sec. 5, Ch. 563, L. 1991.

61-8-810. Suspension of commercial vehicle operator's endorsement — felony involving a commercial motor vehicle. Upon receipt of information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony, the department shall suspend the driver's commercial vehicle operator's endorsement as provided in 61-8-811.

History: En. Sec. 6, Ch. 563, L. 1991.

61-8-811. Suspension of commercial vehicle operator's endorsement — duration — second or subsequent offense. Upon receiving notice pursuant to 61-5-208, 61-8-809, or 61-8-810, the department shall suspend an operator's commercial vehicle operator's endorsement, as follows:

(1) upon notice of a first conviction, for 1 year, with no provision for a probationary license, except that if the offense occurred while operating a commercial motor vehicle transporting hazardous material, the suspension must be for 3 years;

(2) upon notice of a second conviction, as determined from the records of the department, for life, with no provision for a restricted license or endorsement unless allowed by federal rules governing commercial drivers; and

(3) upon notice of a third conviction, an operator's commercial vehicle endorsement must be suspended for life and the operator is ineligible for reinstatement.

History: En. Sec. 7, Ch. 563, L. 1991.

CHAPTER 9

VEHICLE EQUIPMENT

Part 1 — General Provisions

61-9-101. Application — exceptions.
61-9-102. Uniformity of interpretation.
61-9-103. Provisions uniform throughout state — power of local authorities.
61-9-104. Required obedience to traffic laws.
61-9-105. Obedience to police officers and highway patrol officers.
61-9-106. Responsibility of public officers and employees.
61-9-107. Traffic laws applicable to persons driving animal-drawn vehicles.
61-9-108. Rights of owners of real property not affected — when.
61-9-109. Driving vehicle in unsafe condition prohibited — applicability of chapter.

Part 2 — Lighting Equipment

61-9-201. When lighted lamps are required.
61-9-202. Visibility distance and mounted height of lamps.
61-9-203. Headlamps on motor vehicles.
61-9-204. Taillamps.
61-9-205. New motor vehicles to be equipped with reflectors.
61-9-206. Stop lamps — when required.
61-9-207. Application of succeeding sections.
61-9-208. Additional equipment required on certain vehicles.
61-9-209. Color of clearance lamps, side marker lamps, reflectors, and backup lamps.
61-9-210. Mounting of reflectors, clearance lamps, and side marker lamps.
61-9-211. Visibility of reflectors, clearance lamps, and marker lamps.
61-9-212. Obstructed lights not required.
61-9-213. Lamp or flag on projecting load.
61-9-214. Lamps on parked vehicles.
61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry.
61-9-216. Lamps on other vehicles and equipment.
61-9-217. Spot lamps and auxiliary lamps.
61-9-218. Signal lamps and signal devices.
61-9-219. Additional lighting equipment.
61-9-220. Multiple-beam road-lighting equipment.

61-9-221. Use of multiple-beam road-lighting equipment.
61-9-222. Single-beam road-lighting equipment.
61-9-223. Lighting equipment on motor-driven cycles.
61-9-224. Alternate road-lighting equipment.
61-9-225. Number of driving lamps required or permitted.
61-9-226. Special restrictions on lamps.
61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card.
61-9-228. Standards for lights on snow-removal equipment.
61-9-229. Flashing amber light on mail delivery vehicle.

Part 3 — Brakes

61-9-301. Brake equipment required.
61-9-302. Service brakes — adequacy.
61-9-303. Parking brakes — adequacy.
61-9-304. Brakes required on all wheels — exceptions.
61-9-305. Automatic trailer brake application upon breakaway.
61-9-306. Tractor brakes protected.
61-9-307. Trailer air reservoirs safeguarded.
61-9-308. Two means of emergency brake operation.
61-9-309. Single control to operate all brakes.
61-9-310. Reservoir capacity and check valve.
61-9-311. Warning devices.
61-9-312. Performance ability of brakes.
61-9-313. Maintenance of brakes.
61-9-314. Hydraulic brake fluid.
61-9-315. Brakes on motor-driven cycles.

Part 4 — Miscellaneous Regulations

61-9-401. Horns and warning devices.
61-9-402. Audible and visual signals on police and emergency vehicles and on-scene command vehicles.
61-9-403. Mufflers — prevention of noise.
61-9-404. Mirrors.
61-9-405. Windshields to be unobstructed and equipped with wipers — window tinting and sunscreening — restrictions — exemptions.
61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment.
61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location.
61-9-408. Safety glazing material in motor vehicles.
61-9-409. Seatbelts required in new vehicles.
61-9-410. Specifications for seatbelts.
61-9-411. Certain vehicles to carry flares or other warning devices.
61-9-412. Display of warning devices when vehicle disabled.
61-9-413. Vehicles transporting explosives.
61-9-414. Logging trucks.
61-9-415. Slow-moving vehicles.
61-9-416. Commercial tow truck requirements.
61-9-417. Headgear required for minor motorcycle riders.
61-9-418. Motorcycle noise suppression devices.
61-9-419. "Properly restrained" defined.
61-9-420. Child safety restraint systems — standards — exemptions.
61-9-421. Certain vehicles exempt.
61-9-422. Evidence admissible without presumption of negligence.
61-9-423. Penalty.
61-9-424 through 61-9-427 reserved.
61-9-428. Window tinting and sunscreening — waiver — conditions.
61-9-429. Window tinting and sunscreening — penalty.

Part 5 — Enforcement—Penalties

61-9-501. Inspections by officers of the department.
61-9-502. Semiannual inspection of school buses.
61-9-503. Owners and drivers to comply with inspection laws.
61-9-504. Rules.
61-9-505 through 61-9-510 reserved.
61-9-511. Violation of chapter — penalty.
61-9-512. Violation of rules — penalty.
61-9-513. Violation of general lighting requirement and slow-moving vehicle provisions — penalty.
61-9-514. Unauthorized use of firefighter's private vehicle — penalty.
61-9-515. Violations of provisions relating to fenders, splash aprons, or flaps — penalty.
61-9-516. Penalty for seatbelt violations.
61-9-517. Violation of towing requirements — penalty.
61-9-518. Violation of motorcycle or quadricycle requirements — penalty.
61-9-519. Violation of tire restrictions — penalty.
61-9-520. Penalty.

Chapter Cross-References

Motor carriers safety — enforcement by Highway Patrol, 44-1-1005.

Vehicle Equipment Safety Compact, Title 61, ch. 2, part 2.

Joint enforcement of motor carrier safety standards by Highway Patrol, Department of Transportation, 61-10-141.

Part 1

General Provisions

61-9-101. Application — exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a given section.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state, provided that such crossings are adequately marked with such warning signs or devices and are subject to relating to stopping before entry, and to restoration of any damage, as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved.

History: (1)En. Sec. 22, Ch. 263, L. 1955; Sec. 32-2124, R.C.M. 1947; (2)En. Sec. 4, Ch. 247, L. 1959; Sec. 32-2124.1, R.C.M. 1947; R.C.M. 1947, 32-2124(part), 32-2124.1.

Cross-References

Livestock on highways — flagmen escorts, 60-7-204.

"Highway" defined, 61-1-201.

Traffic safety program, Title 61, ch. 2, part 1.

Traffic regulation — application — exceptions, 61-8-101.

61-9-102. Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 155, Ch. 263, L. 1955; R.C.M. 1947, 32-21-158.

61-9-103. Provisions uniform throughout state — power of local authorities. The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

History: En. Sec. 27, Ch. 263, L. 1955; amd. Sec. 1, Ch. 201, L. 1957; R.C.M. 1947, 32-2130.

Cross-References

Self-government powers, Art. XI, sec. 6, Mont. Const.

Municipal traffic regulations, Title 7, ch. 14, part 41.

61-9-104. Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor punishable as provided in 61-9-511 for any person to do any act forbidden or fail to perform any act required in this chapter.

History: En. Sec. 23, Ch. 263, L. 1955; R.C.M. 1947, 32-2125; amd. Sec. 2, Ch. 40, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "misdemeanor", inserted "punishable as provided in 61-9-511".

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-9-105. Obedience to police officers and highway patrol officers. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or highway patrol officer pertaining to the use of the highways by traffic.

History: En. Sec. 24, Ch. 263, L. 1955; R.C.M. 1947, 32-2126; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Jurisdiction of Highway Patrol, Title 44, ch. 1, part 10.

Obstructing a peace officer, 45-7-302.

Obstructing justice, 45-7-303.

Obedience to police officers and highway patrol officers, 61-8-105.

61-9-106. Responsibility of public officers and employees. (1) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, or town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(2) Unless specifically made applicable, the provisions of this chapter except those contained in part 5 of chapter 8 shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the

surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

History: En. Sec. 25, Ch. 263, L. 1955; R.C.M. 1947, 32-2127.

Cross-References

Public-owned vehicles exempt from license or registration fees, 61-3-321.

61-9-107. Traffic laws applicable to persons driving animal-drawn vehicles. Every person driving an animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History: En. Sec. 26, Ch. 263, L. 1955; R.C.M. 1947, 32-2129.

Cross-References

"Vehicle" defined, 61-1-103.

Traffic laws applicable to persons driving animal-drawn vehicles, 61-8-108.

61-9-108. Rights of owners of real property not affected — when. Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner from prohibiting such use or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

History: En. Sec. 29, Ch. 263, L. 1955; R.C.M. 1947, 32-2132.

Cross-References

"Private road" or "driveway" defined, 61-1-205.

Rights of owners of real property not affected — when, 61-8-109.

61-9-109. Driving vehicle in unsafe condition prohibited — applicability of chapter. (1) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

(2) Nothing contained in this chapter shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.

(3) The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

History: En. Sec. 111, Ch. 263, L. 1955; R.C.M. 1947, 32-21-114.

Cross-References

Motor carriers safety — enforcement by Highway Patrol, 44-1-1005.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

"Farm tractor" defined, 61-1-109.

"Implement of husbandry" defined, 61-1-121.

Part 2

Lighting Equipment

Part Cross-References

Prohibited operation of special lighting equipment on school buses, 61-8-352.

61-9-201. When lighted lamps are required. Every vehicle upon a highway within this state at any time from one-half hour after sunset to one-half hour before sunrise and at any other time when due to insufficient light or unfavorable atmospheric conditions persons and vehicles on the highway are not clearly discernible at a distance of 500 feet ahead shall display lighted lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles.

History: En. Sec. 112, Ch. 263, L. 1955; R.C.M. 1947, 32-21-115.

Cross-References

"Highway" defined, 61-1-201.

Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers, 61-8-312.

Riding on motorcycles — lights on at all times, 61-8-359.

61-9-202. Visibility distance and mounted height of lamps. (1) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible, said provisions shall apply during the times stated in 61-9-201 in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(2) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

History: En. Sec. 113, Ch. 263, L. 1955; R.C.M. 1947, 32-21-116.

61-9-203. Headlamps on motor vehicles. (1) Every motor vehicle other than a motorcycle, quadricycle, or motor-driven cycle shall be equipped with at least two headlamps, with at least one on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter.

(2) Every motorcycle, quadricycle, and motor-driven cycle shall be equipped with at least one and not more than two headlamps which shall comply with the requirements and limitations of this chapter. If a motorcycle is registered under 61-3-411 as a collector's item, it need not be equipped with headlamps, but if it is not so equipped it may not be operated upon a highway or street from one-half hour after sunset to one-half hour before sunrise or if persons and vehicles are not clearly discernible at a distance of 500 feet.

(3) Every headlamp upon every motor vehicle, including every motorcycle, quadricycle, and motor-driven cycle, shall be located at a height, measured from the center of the headlamp, of not more than 54 inches or less than 24 inches, to be measured as set forth in 61-9-202(2).

History: En. Sec. 114, Ch. 263, L. 1955; amd. Sec. 1, Ch. 103, L. 1957; R.C.M. 1947, 32-21-117; amd. Sec. 2, Ch. 345, L. 1983; amd. Sec. 36, Ch. 516, L. 1985.

Cross-References

"Motor vehicle" defined, 61-1-102.
"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Quadricycle" defined, 61-1-133.
Riding on motorcycles, 61-8-359.

61-9-204. Taillamps. (1) Every motor vehicle, trailer, semitrailer, and pole trailer and any other vehicle which is being drawn at the end of a train of vehicles shall be equipped with at least one taillamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of 500 feet to the rear, provided that in the case of a train of vehicles only the taillamp on the rearmost vehicle need actually be seen from the distance specified. Further, every such above-mentioned vehicle, other than a motorcycle, motor-driven cycle, quadricycle, or truck tractor, registered in this state and manufactured or assembled after January 1, 1956, shall be equipped with at least two taillamps mounted on the rear, which when lighted as herein required, shall comply with the provisions of this section.

(2) Every taillamp upon every vehicle shall be located at a height of not more than 72 inches or less than 15 inches.

(3) Either taillamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear. Any taillamp or taillamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted.

(4) Taillamps are not required on a motorcycle that is registered under 61-3-411 as a collector's item, but such motorcycle may not be operated on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at a distance of 500 feet unless it is equipped with the required taillamps.

History: En. Sec. 115, Ch. 263, L. 1955; R.C.M. 1947, 32-21-118; amd. Sec. 1, Ch. 42, L. 1979; amd. Sec. 3, Ch. 345, L. 1983; amd. Sec. 1, Ch. 58, L. 1987.

Cross-References

"Motorcycle" defined, 61-1-105.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.
Number plates, 61-3-332.
Riding on motorcycles, 61-8-359.

61-9-205. New motor vehicles to be equipped with reflectors. (1) Every new motor vehicle hereafter sold and operated upon a highway, other than a truck tractor, shall carry on the rear, either as a part of the taillamps or separately, two red reflectors, except that every motorcycle, quadricycle, and motor-driven cycle shall carry at least one reflector meeting the requirements of this section, and except that vehicles of the type mentioned in

61-9-208 shall be equipped with reflectors as required in those sections applicable thereto.

(2) Every such reflector shall be mounted on the vehicle at a height not less than 15 inches or more than 60 inches measured as set forth in 61-9-202(2) and shall be of such size and characteristics and so mounted as to be visible at night from all distances within 300 feet to 50 feet from such vehicle when directly in front of lawful upper beams of headlamps, except that visibility from a greater distance may be required of reflectors on certain types of vehicles.

History: En. Sec. 116, Ch. 263, L. 1955; R.C.M. 1947, 32-21-119; amd. Sec. 2, Ch. 42, L. 1979; amd. Sec. 37, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Truck tractor" defined, 61-1-108.
"Quadricycle" defined, 61-1-133.

61-9-206. Stop lamps — when required. From and after January 1, 1956, it shall be unlawful for any person to sell any new motor vehicle, including any motorcycle, quadricycle, or motor-driven cycle, in this state or for any person to drive such vehicle on the highways unless it is equipped with at least one stop lamp meeting the requirements of 61-9-218.

History: En. Sec. 117, Ch. 263, L. 1955; R.C.M. 1947, 32-21-120; amd. Sec. 38, Ch. 516, L. 1985.

Cross-References

"Motor vehicle" defined, 61-1-102.
"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Quadricycle" defined, 61-1-133.

61-9-207. Application of succeeding sections. Those sections of this chapter which follow immediately, including 61-9-208 through 61-9-211 and 61-9-213 relating to clearance and marker lamps, reflectors, and stoplights shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger buses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively, when operated upon any highway. Said vehicles shall be equipped as required and all lamp equipment required shall be lighted at all times mentioned in 61-9-201 except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of 500 feet.

History: En. Sec. 118, Ch. 263, L. 1955; R.C.M. 1947, 32-21-121.

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.
"Bus" defined, 61-1-115.

61-9-208. Additional equipment required on certain vehicles. In addition to other equipment required in this chapter, the following vehicles shall be equipped as herein stated under the conditions stated in 61-9-207:

(1) On every bus or truck, whatever its size, there shall be on the rear, two reflectors, one at each side, and one stoplight.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subsection (1):

(a) on the front, two clearance lamps, one at each side;

(b) on the rear, two clearance lamps, one at each side;

(c) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(d) on each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

(a) on the front, two clearance lamps, one at each side;

(b) on the rear, one stoplight.

(4) On every trailer or semitrailer having a gross weight in excess of 3,000 pounds:

(a) on the front, two clearance lamps, one at each side;

(b) on each side, two side marker lamps, one at or near the front and one at or near the rear;

(c) on each side, two reflectors, one at or near the front and one at or near the rear;

(d) on the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stoplight.

(5) On every pole trailer in excess of 3,000 pounds gross weight:

(a) on each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side, and rear;

(b) on the rear of the pole trailer or load, two reflectors, one at each side.

(6) On every trailer, semitrailer, or pole trailer weighing 3,000 pounds gross or less:

(a) on the front, a steel chain or cable which shall be securely fastened to the towing unit with the minimum diameter of any portion of such chains or cables being one-fourth inch;

(b) on the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.

History: **En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part).**

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.
"Bus" defined, 61-1-115.

61-9-209. Color of clearance lamps, side marker lamps, reflectors, and backup lamps. (1) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(2) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(3) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stoplight or other signal device, which may be red, amber, or yellow, and except that the light illuminating

the license plate shall be white and the light emitted by a backup lamp may be white, amber, or red.

History: En. Sec. 120, Ch. 263, L. 1955; R.C.M. 1947, 32-21-123.

Cross-References

Number plates, 61-3-332.

61-9-210. Mounting of reflectors, clearance lamps, and side marker lamps. (1) Reflectors when required by 61-9-208 shall be mounted at a height not less than 24 inches and not higher than 60 inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than 24 inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

(2) The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

(3) Any required red reflector on the rear of a vehicle may be incorporated with the taillamp, but such reflector shall meet all the other reflector requirements of this chapter.

(4) Clearance lamps shall be mounted on the permanent structure of the vehicle in such a manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

History: En. Sec. 121, Ch. 263, L. 1955; R.C.M. 1947, 32-21-124.

Cross-References

"Pole trailer" defined, 61-1-114.

61-9-211. Visibility of reflectors, clearance lamps, and marker lamps. (1) Every reflector upon any vehicle referred to in 61-9-208 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful upper beams of headlamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(2) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of 500 feet from the front and rear respectively of the vehicle.

(3) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions, at the times lights are required, at a distance of 500 feet from the side of the vehicle on which mounted.

History: En. Sec. 122, Ch. 263, L. 1955; R.C.M. 1947, 32-21-125.

61-9-212. Obstructed lights not required. Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except taillamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirements that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps or that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

History: **En. Sec. 123, Ch. 263, L. 1955; R.C.M. 1947, 32-21-126.**

61-9-213. Lamp or flag on projecting load. Whenever the load upon any vehicle extends to the rear 4 feet or more beyond the bed or body of such vehicle, there shall be displayed at the extreme rear end of the load, at the times specified in 61-9-201, a red light or lantern plainly visible from a distance of at least 500 feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red light required upon every vehicle. At any other time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than 12 inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

History: **En. Sec. 124, Ch. 263, L. 1955; R.C.M. 1947, 32-21-127.**

61-9-214. Lamps on parked vehicles. (1) Whenever a vehicle is lawfully parked upon a street or highway during the hours between one-half hour after sunset and one-half hour before sunrise and in the event there is sufficient light to reveal any person or object within a distance of 500 feet upon such street or highway no lights need be displayed upon such parked vehicle.

(2) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between one-half hour after sunset and one-half hour before sunrise and there is not sufficient light to reveal any person or object within a distance of 500 feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: at least one lamp shall display a white or amber light visible from a distance of 500 feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of 500 feet to the rear of the vehicle, and the location of said lamp or lamps, shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(3) Any lighted headlamp upon a parked vehicle shall be depressed or dimmed.

History: **En. Sec. 125, Ch. 263, L. 1955; R.C.M. 1947, 32-21-128.**

Cross-References

"Motor-driven cycle" defined, 61-1-106.

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

Unattended motor vehicles, 61-8-357.

61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry. (1) Every farm tractor and every self-propelled farm equipment unit or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 500 feet to the front of such vehicle and shall also be equipped with at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear of such vehicle and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. The lights required herein shall be positioned so that one lamp showing to the front and one lamp or reflector showing to the rear will indicate the furthest projection of said tractor, unit, or implement on the side of the road used in passing such vehicle.

(2) Every combination of farm tractor and towed unit of farm equipment or implement of husbandry not equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) at least one lamp mounted to indicate as nearly as practicable the extreme left projection of said combination and displaying a white light visible from a distance of not less than 500 feet to the front of said combination; and

(b) two lamps each displaying a red light visible from a distance of not less than 500 feet to the rear of said combination, or as an alternative, at least one lamp displaying a red light visible from a distance of not less than 500 feet to the rear thereof and two red reflectors visible from a distance of 100 to 600 feet to the rear thereof when illuminated by the upper beams of headlamps, which said lamps or reflectors shall be mounted in such manner as to indicate as nearly as practicable the extreme left and right rear projections of said towed unit or implement on the highway.

(3) Every farm tractor and every self-propelled unit of farm equipment or implement of husbandry equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with two single-beam or multiple-beam headlamps meeting the requirements of 61-9-222 or 61-9-220 respectively, or as an alternative, 61-9-224, and two red lamps visible from a distance of not less than 500 feet to the rear, or in the alternative, one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps. Such red lamps or reflectors shall be mounted in the rear of said farm tractor or self-propelled implement of husbandry so as to indicate as nearly as practicable the extreme left and right projections of said vehicle on the highway.

(4) Every combination of farm tractor and towed farm equipment or towed implement of husbandry equipped with an electric lighting system shall at all times mentioned in 61-9-201 be equipped with the following lamps:

(a) The farm tractor element of every such combination shall be equipped with two single-beam or multiple-beam headlamps meeting the requirements of 61-9-220, 61-9-222, or 61-9-224.

(b) The towed unit of farm equipment or implement of husbandry element of such combination shall be equipped with two red lamps visible from a distance of not less than 500 feet to the rear, or as an alternative, one red lamp visible from a distance of not less than 500 feet to the rear and two red reflectors visible from a distance of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps; and such red lamps or reflectors shall be located so as to indicate as nearly as practicable the extreme left and right projections of said towed unit or implement on the highway.

(c) Said combination shall also be equipped with a lamp displaying a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 500 feet to the front and a lamp displaying a red light visible from a distance of not less than 500 feet to the rear, which said lamp or lamps shall be installed or capable of being positioned so as to indicate to the front and rear the furthest projection of said combination on the side of the road used by other vehicles in passing such combination.

History: En. Sec. 126, Ch. 263, L. 1955; R.C.M. 1947, 32-21-129.

Cross-References

"Farm tractor" defined, 61-1-109.

"Implement of husbandry" defined, 61-1-121.

61-9-216. Lamps on other vehicles and equipment. Every vehicle, including animal-drawn vehicles and vehicles referred to in 61-9-109(3), not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, shall at all times specified in 61-9-201 be equipped with at least one lamp displaying a white light visible from a distance of not less than 500 feet to the front of said vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than 500 feet to the rear of said vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than 500 feet to the rear and two red reflectors visible for distances of 100 to 600 feet to the rear when illuminated by the upper beams of headlamps.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(a).

Cross-References

Traffic laws applicable to persons driving animal-drawn vehicles, 61-8-108, 61-9-107.

Violation of general lighting requirement and slow-moving vehicle provisions — penalty, 61-9-513.

61-9-217. Spot lamps and auxiliary lamps. (1) Any motor vehicle may be equipped with not to exceed two spot lamps and every lighted spot lamp shall be turned off upon approaching another moving vehicle from either direction.

(2) Any motor vehicle may be equipped with not to exceed two fog lamps mounted on the front at a height not less than 12 inches or more than 30 inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of 25 feet ahead project higher than a level of 4 inches below the level of the center of the lamp from which it comes. Lighted fog lamps meeting the above requirements may be used with lower headlamp beams as specified in 61-9-220(2).

(3) Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than 24 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 shall apply to any combination of headlamps and auxiliary passing lamps.

(4) Any motor vehicle may be equipped with not to exceed two auxiliary driving lamps mounted on the front at a height not less than 16 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 shall apply to any combination of headlamps and auxiliary driving lamps.

History: En. Sec. 128, Ch. 263, L. 1955; amd. Sec. 1, Ch. 147, L. 1957; R.C.M. 1947, 32-21-131.

61-9-218. Signal lamps and signal devices. (1) Any motor vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps.

(2) Any motor vehicle may be equipped and when required under this chapter shall be equipped with lamps showing to the front and rear for the purpose of indicating an intention to turn either to the right or left. When lamps are used for such purposes, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than 100 feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable and when in use shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight. When actuated such lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

(3) No stop lamp or signal lamp or device shall project a glaring light.

History: En. Sec. 130, Ch. 263, L. 1955; amd. Sec. 2, Ch. 105, L. 1957; R.C.M. 1947, 32-21-133.

Cross-References

Turning movements and required signals, 61-8-336.

Signals by hand and arm or signal device, 61-8-337.

61-9-219. Additional lighting equipment. (1) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(2) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(3) Any motor vehicle may be equipped with not more than two backup lamps either separately or in combination with other lamps, but any such backup lamps shall not be lighted when the motor vehicle is in forward motion.

(4) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing, and when so equipped may display such warning in addition to any other warning signals required by this chapter. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between

amber and red. These warning lights shall be visible from a distance of not less than 500 feet under normal atmospheric conditions at night.

History: En. Sec. 131, Ch. 263, L. 1955; R.C.M. 1947, 32-21-134.

Cross-References

Vehicle width, 61-10-102.

61-9-220. Multiple-beam road-lighting equipment. Except as hereinafter provided, the headlamps or the auxiliary driving lamp or the auxiliary passing lamp or combination thereof on motor vehicles other than motorcycles, quadricycles, or motor-driven cycles shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(1) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least 350 feet ahead for all conditions of loading.

(2) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(3) Every new motor vehicle, other than a motorcycle, quadricycle, or motor-driven cycle, registered in this state after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the headlamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

History: En. Sec. 132, Ch. 263, L. 1955; R.C.M. 1947, 32-21-135; amd. Sec. 39, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.

"Motor-driven cycle" defined, 61-1-106.

"Quadricycle" defined, 61-1-133.

61-9-221. Use of multiple-beam road-lighting equipment. Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in 61-9-201, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(1) Whenever the driver of a vehicle approaches an oncoming vehicle within 1,000 feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light specified in 61-9-220(2) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(2) Whenever the driver of a vehicle follows another vehicle within 300 feet to the rear, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in subsection (1) of 61-9-220.

History: **En. Sec. 133, Ch. 263, L. 1955; R.C.M. 1947, 32-21-136.**

Cross-References

Following too closely, 61-8-329.

61-9-222. Single-beam road-lighting equipment. Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to July 1, 1956, in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The headlamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of 25 feet ahead project higher than a level of 5 inches below the level of the center of the lamp from which it comes, and in no case higher than 42 inches above the level on which the vehicle stands at a distance of 75 feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least 200 feet.

History: **En. Sec. 134, Ch. 263, L. 1955; R.C.M. 1947, 32-21-137.**

61-9-223. Lighting equipment on motor-driven cycles. The headlamp or headlamps upon every motor-driven cycle may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every said headlamp or headlamps on a motor-driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than 100 feet when the motor-driven cycle is operated at any speed less than 25 miles per hour and at a distance of not less than 200 feet when the motor-driven cycle is operated at a speed of 25 or more miles per hour, and at a distance of not less than 300 feet when the motor-driven cycle is operated at a speed of 35 or more miles per hour.

(2) In the event the motor-driven cycle is equipped with a multiple-beam headlamp or headlamps the upper beam shall meet the minimum requirements set forth above and shall not exceed the limitations set forth in 61-9-220(1) and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in 61-9-220(2).

(3) In the event the motor-driven cycle is equipped with a single-beam lamp or lamps, said lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light at a distance of 25 feet ahead shall project higher than the level of the center of the lamp from which it comes.

History: **En. Sec. 135, Ch. 263, L. 1955; R.C.M. 1947, 32-21-138.**

Cross-References

"Motor-driven cycle" defined, 61-1-106.

Riding on motorcycles, 61-8-359.

61-9-224. Alternate road-lighting equipment. Any motor vehicle may be operated under the conditions specified in 61-9-201 when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects 75 feet ahead in lieu of lamps required in 61-9-220 or 61-9-222 provided, however, that at no time shall it be operated at a speed in excess of 20 miles per hour.

History: En. Sec. 136, Ch. 263, L. 1955; R.C.M. 1947, 32-21-139.

Cross-References
Special speed limitations, 61-8-313.

61-9-225. Number of driving lamps required or permitted. (1) At all times specified in 61-9-201, at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, quadricycle, or motor-driven cycle, except when such vehicle is parked, subject to the regulations governing lights on parked vehicles.

(2) Whenever a motor vehicle equipped with headlamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

History: En. Sec. 137, Ch. 263, L. 1955; R.C.M. 1947, 32-21-140; amd. Sec. 40, Ch. 516, L. 1985.

Cross-References
"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Quadricycle" defined, 61-1-133.

61-9-226. Special restrictions on lamps. (1) Any lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps, or flashing turn signals, emergency vehicle warning lamps, and school bus warning lamps, which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the high intensity portion of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(2) No person shall drive or move any vehicle or equipment upon a highway with any lamp or device thereon displaying a red light visible from directly in front of the center thereof. This section shall not apply to any vehicle upon which a red light visible from the front is expressly authorized or required by this code.

(3) Flashing lights are prohibited except on an authorized emergency vehicle, school bus, snow-removal equipment, or on any vehicle as a means for indicating a right or left turn, or the presence of a vehicular traffic hazard requiring unusual care in approaching, overtaking, or passing.

History: En. Sec. 138, Ch. 263, L. 1955; R.C.M. 1947, 32-21-141.

Cross-References
"School bus" defined, 61-1-116.
"Authorized emergency vehicles" defined, 61-1-119.

61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card. (1) Firefighters, when authorized by the chief of their respective department, and search and rescue and volunteer emergency medical personnel, when authorized by the county sheriff, may use a blinker-type or revolving red light on the front or the top of their privately owned motor vehicles. This light shall be used on emergency duty only.

(2) Any firefighter or search and rescue or volunteer emergency medical personnel displaying the emergency red light on a privately owned motor vehicle shall also carry attached to a convenient location on the vehicle to

which the red light is attached an identification card showing the name of the owner of said vehicle, the organization to which he belongs, and bearing the signature of the person authorizing the emergency use of said light.

History: En. Sec. 1, Ch. 154, L. 1957; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 32-21-141.1; amd. Sec. 1, Ch. 369, L. 1981.

Cross-References

Provision for fire equipment, 7-33-4202.

Unauthorized use of firefighter's private vehicle — penalty, 61-9-514.

61-9-228. Standards for lights on snow-removal equipment. (1) The commission shall adopt standards and specifications applicable to headlamps, clearance lamps, and identification and other lamps on snow-removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow-removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and so far as possible conform with those approved by the American association of state highway officials.

(2) It shall be unlawful to operate any snow-removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

History: En. Sec. 139, Ch. 263, L. 1955; R.C.M. 1947, 32-21-142.

Cross-References

Highway Commission, 2-15-2502; Title 60, ch. 2, part 1.

61-9-229. Flashing amber light on mail delivery vehicle. (1) A vehicle engaged in delivery of United States mail may be equipped with a blinker-type or revolving amber light mounted on the top of the vehicle, and the light may be illuminated while the vehicle is engaged in delivery of mail.

(2) A person delivering the United States mail and illuminating an amber light on a privately owned motor vehicle shall carry attached to the motor vehicle an identification card showing the name of the owner of the vehicle and signed by the postmaster authorizing the use of the amber light.

History: En. Sec. 1, Ch. 285, L. 1987.

Cross-References

Right-of-way for military not to interfere with mail delivery, 10-1-602.

Part 3

Brakes

61-9-301. Brake equipment required. Every motor vehicle, trailer, semitrailer, and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this part.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(part).

Cross-References

"Motor vehicle" defined, 61-1-102.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.

61-9-302. Service brakes — adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in 61-1-104, shall be equipped with service brakes complying with the performance requirements of 61-9-312 and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading and on any grade incident to its operation.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(a).

61-9-303. Parking brakes — adequacy. Every such vehicle and combination of vehicles, except motorcycles, quadricycles, and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice, or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power, provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(b); amd. Sec. 41, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Quadricycle" defined, 61-1-133.

61-9-304. Brakes required on all wheels — exceptions. Every vehicle shall be equipped with brakes acting on all wheels except:

(1) trailers, semitrailers, pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

(a) the total weight on and including the wheels of the trailer or trailers shall not exceed 40% of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(b) the combination of vehicles consisting of the towing vehicle and its total towed load is capable of complying with the performance requirements of 61-9-312;

(2) any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of 61-9-312;

(3) trucks and truck tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck tractors must be capable of complying with the performance requirements of 61-9-312.

(4) special mobile equipment as defined in 61-1-104;

(5) the wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes. However, a quadricycle, motorcycle, or motor-driven cycle must be capable of complying with the performance requirements of 61-9-312.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(c); amd. Sec. 42, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.
"Quadricycle" defined, 61-1-133.
Permit and transit plates for new vehicles being transported by driveaway or towaway methods, 61-4-301.

61-9-305. Automatic trailer brake application upon breakaway. Every trailer, semitrailer, and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer, and pole trailer with a gross weight in excess of 3,000 pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least 15 minutes upon breakaway from the towing vehicle.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(d).

Cross-References

"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.

61-9-306. Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer, or pole trailer equipped with brakes shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(e).

Cross-References

"Truck tractor" defined, 61-1-108.
"Road tractor" defined, 61-1-110.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.

61-9-307. Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(f).

Cross-References

"Trailer" defined, 61-1-111.

61-9-308. Two means of emergency brake operation. (1) After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than 20 pounds per square inch or higher than 45 pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

(2) After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by 61-9-309, a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(g).

Cross-References

"Truck tractor" defined, 61-1-108.

"Road tractor" defined, 61-1-110.

61-9-309. Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer, and pole trailer, and every combination of such vehicles, except motorcycles, quadricycles, and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(h); amd. Sec. 43, Ch. 516, L. 1985.

Cross-References

"Motor vehicle" defined, 61-1-102.

"Motorcycle" defined, 61-1-105.

"Motor-driven cycle" defined, 61-1-106.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Pole trailer" defined, 61-1-114.
"Quadricycle" defined, 61-1-133.

61-9-310. Reservoir capacity and check valve. (1) Every bus, truck, or truck tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cutout setting, a full service brake application may be made without lowering such reservoir pressure by more than 20%. Each reservoir shall be provided with means for readily draining accumulated oil or water.

(2) After January 1, 1966, every truck with three or more axles equipped with vacuum assistor type brakes and every truck tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than 40%.

(3) All motor vehicles, trailers, semitrailers, and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that, in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(i).

Cross-References
"Motor vehicle" defined, 61-1-102.
"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.
"Bus" defined, 61-1-115.
"Axle" defined, 61-1-128.

61-9-311. Warning devices. (1) Every bus, truck, or truck tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below 50% of the air compressor governor cutout pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

(2) After January 1, 1966, every truck tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than 8 inches of mercury.

(3) When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes.

A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.1(j).

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Bus" defined, 61-1-115.

"Axle" defined, 61-1-128.

61-9-312. Performance ability of brakes. (1) Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) developing a braking force that is not less than the percentage of its gross weight tabulated in subsection (3) for its classification;

(b) decelerating to a stop from not more than 20 miles per hour at not less than the feet per second per second tabulated in subsection (3) for its classification; and

(c) stopping from a speed of 20 miles per hour in not more than the distance tabulated in subsection (3) for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

(2) Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus 1% grade), dry, smooth, hard surface that is free from loose material.

(3)

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating	52.8%	17	25
B-1 All motorcycles, quadricycles, and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of than ten thousand (10,000) pounds or less...	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight			

	rating of more than ten thousand (10,000) pounds	43.5%	14	40
C-2	Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3	Buses, regardless of the number of axles, not having a manufacturer's gross weight rating	43.5%	14	40
C-4	All combinations of vehicles in driveaway-towaway operations	43.5%	14	40
D	All other vehicles and combinations of vehicles	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.2; amd. Sec. 44, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

61-9-313. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.3.

61-9-314. Hydraulic brake fluid. (1) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(2) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(3) The department shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(4) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965; R.C.M. 1947, 32-21-143.4; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

61-9-315. Brakes on motor-driven cycles. (1) The department is authorized to require an inspection of the brake on any motor-driven cycle and to disapprove any brake which it finds will not comply with the performance ability standard set forth in this part or which in its opinion is not designed or constructed to insure reasonable and reliable performance in actual use.

(2) The department may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when it has been determined that the brake thereon does not comply with the provisions of this section.

(3) No person may operate on any highway any vehicle referred to in this section if the department has disapproved the brake equipment upon such vehicle or type of vehicle.

History: En. Sec. 141, Ch. 263, L. 1955; R.C.M. 1947, 32-21-144; amd. Sec. 72, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
"Motor-driven cycle" defined, 61-1-106.
Registration, Title 61, ch. 3, part 3.

Part 4

Miscellaneous Regulations

61-9-401. Horns and warning devices. (1) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(2) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(3) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

(4) Any authorized emergency vehicle may be equipped with a siren, whistle, or bell capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the department, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver

of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

History: En. Sec. 142, Ch. 263, L. 1955; R.C.M. 1947, 32-21-145; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

"Police vehicle" defined, 61-1-118.

"Authorized emergency vehicle" defined, 61-1-119.

Police vehicles and authorized emergency vehicles, 61-8-107.

Operation of vehicles on approach of police vehicles or authorized emergency vehicles, 61-8-346.

Pedestrians — drivers to exercise due care, 61-8-504.

61-9-402. Audible and visual signals on police and emergency vehicles and on-scene command vehicles. (1) A police vehicle shall be equipped with a siren capable of giving an audible signal and may, but need not, be equipped with alternately flashing or rotating red or blue lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren and an alternately flashing or rotating red light as specified herein.

(3) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

(4) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights shall be of a type and located on each bus as prescribed by the state board of education and approved by the department.

(5) Police vehicles and authorized emergency vehicles may, and emergency service vehicles shall, in addition to any other equipment and distinctive markings required by this chapter be equipped with alternately flashing or rotating amber lights as specified herein. The use of signal equipment described herein shall impose upon the drivers of other vehicles the obligation to yield right-of-way and/or to stop and to proceed past such signal or light only with caution and at a speed which is no greater than is reasonable and proper under the conditions existing at the point of operation.

(6) Blue, red, and amber lights required in this section shall be mounted as high as and as widely spaced laterally as practicable and capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or as an alternative, one rotating light of the specified color, mounted as high as is practicable which shall be both visible front and rear. These lights shall have sufficient intensity to be visible at 500 feet in normal sunlight. The use of blue lights as required in subsection (1) of this section shall be restricted to police vehicles as defined in 61-1-118.

(7) Every police car and authorized emergency vehicle may be equipped with a portable signal lamp that is green in color and capable of magnetic attachment to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light shall have sufficient intensity to be visible at 500 feet in normal sunlight.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965; amd. Sec. 4, Ch. 153, L. 1975; R.C.M. 1947, 32-21-132; amd. Sec. 1, Ch. 361, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 116, Ch. 370, L. 1987.

Cross-References

School bus requirements, 20-10-102.

Duties of Board of Public Education, 20-10-111.

"Bus" defined, 61-1-115.

"School bus" defined, 61-1-116.

"Police vehicle" defined, 61-1-118.

"Authorized emergency vehicle" defined, 61-1-119.

Police vehicles and authorized emergency vehicles, 61-8-107.

Reckless driving, 61-8-301.

Operation of vehicles on approach of police vehicles or authorized emergency vehicles, 61-8-346.

Meeting or passing school bus, 61-8-351.

Prohibited operation of special lighting equipment on school buses, 61-8-352.

61-9-403. Mufflers — prevention of noise. (1) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.

(2) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

History: En. Sec. 143, Ch. 263, L. 1955; R.C.M. 1947, 32-21-146.

Cross-References

Nuisances, Title 27, ch. 30.

61-9-404. Mirrors. On and after January 1, 1960, every motor vehicle shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least 200 feet to the rear of such motor vehicle.

History: En. Sec. 144, Ch. 263, L. 1955; amd. Sec. 1, Ch. 113, L. 1959; R.C.M. 1947, 32-21-147.

61-9-405. Windshields to be unobstructed and equipped with wipers — window tinting and sunscreening — restrictions — exemptions. (1) A person may not drive a motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of the vehicle that obstructs the driver's clear view of the highway or any intersecting highway.

(2) The windshield on each motor vehicle must be equipped with a device for clearing rain, snow, or other moisture from the windshield.

(3) Each windshield wiper upon a motor vehicle must be maintained in good working order.

(4) A person may not operate a motor vehicle that is required to be registered in this state upon a highway if:

(a) the windshield has any sunscreening material that is not clear and transparent below the AS-1 line or if it has a sunscreening material that is red, yellow, or amber in color above the AS-1 line;

(b) the front side windows have any sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 35%;

(c) the rear window or side windows behind the front seat have sunscreening or other transparent material that has a luminous reflectance of more than 35% or has light transmission of less than 20%, except for the rear window or side windows behind the front seat on a multipurpose vehicle, van, or bus; or

(d) the windows of a camper, motor home, pickup cover, slide-in camper, or other motor vehicle do not meet the standards for safety glazing material specified by federal law in 49 CFR 571.205.

(5) As used in 61-9-428, 61-9-429, and this section, the following definitions apply:

(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons.

(b) "Glass-plastic glazing material" means a laminate of one or more layers of glass and one or more layers of plastic in which a plastic surface of the glazing faces inward when the glazing is installed in a vehicle.

(c) "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(d) "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or transparent material to the amount of total light falling on the motor vehicle window.

(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations.

(f) "Multipurpose vehicle" means a motor vehicle designed to carry 10 or fewer passengers that is constructed on a truck chassis or with special features for occasional off-road use.

(g) "Pickup cover" means a camper having a roof and sides but without a floor designed to be mounted on and removable from the cargo area of a pickup truck by the user.

(h) "Slide-in camper" means a camper having a roof, floor, and sides designed to be mounted on and removable from the cargo area of a truck by the user.

(i) "Sunscreening material" means a film, material, tint, or device applied to motor vehicle windows for the purpose of reducing the effects of the sun.

(6) Subsection (4) does not apply to a vehicle that is equipped with tinted windows of the type and specifications that were installed by the manufacturer of the vehicle or to any hearse, ambulance, government vehicle, or any other vehicle to which a currently valid certificate of waiver is affixed as specified under 61-9-428. A certificate of waiver must be issued by the department for a vehicle that is registered in this state on October 1, 1991, and is equipped with a sunscreening device or other material prohibited under subsection (4) on October 1, 1991.

History: En. Sec. 145, Ch. 263, L. 1955; R.C.M. 1947, 32-21-148; amd. Sec. 1, Ch. 777, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at end after "windshield", deleted "which device shall be so constructed as to be controlled or operated by the driver of the vehicle"; inserted (4) concerning prohibiting windshield sunscreening material below the AS-1 line or red, yellow, or amber material above the AS-1 line, establishing acceptable level of luminous reflectance and light transmission for side and rear window sunscreening material, and requiring windows of camper, motor home, pickup cover, slide-in camper, or other vehicle to meet standards for safety glazing material specified by federal law; inserted (5) defining camper, glass-plastic glazing material, light transmission, luminous reflectance, motor home, multipurpose vehicle, pickup cover, slide-in camper, and sunscreening material; inserted (6) concerning exception for certain vehicles and vehicles with waiver certificate affixed or registered in state on October 1, 1991; and made minor changes in style.

Cross-References

Obstruction to driver's view or driving mechanism, 61-8-360.

61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction equipment. (1) A solid rubber tire on a vehicle must have rubber on its entire traction surface at least 1 inch thick above the edge of the flange of the entire periphery.

(2) A person may not operate or move on a highway a motor vehicle, trailer, or semitrailer having a metal tire in contact with the roadway.

(3) A tire on a vehicle moved on a highway may not have on its periphery a block, stud, flange, cleat, or spike, or other protuberance of a material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use farm machinery with tires having protuberances that will not injure the highway. It is also permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material, such as wood, wire, plastic or metal, that may not protrude more than one-sixteenth of an inch beyond the tire tread or that are clearly marked by the manufacturer on the sidewall "all season m&s" (or "all season mud and snow"), upon a vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid. The use of pneumatic tires embedded as provided in this section is permitted only between October 1 and May 31 of each year, except that one of those tires may be used for a spare in case of tire failure. School buses equipped with such embedded pneumatic tires may operate from August 15 through the following June 15.

(4) The department of transportation and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon a highway of farm tractors or other farm machinery or of

traction engines or tractors having movable tracks with transverse corrugations upon the periphery of the movable tracks, the operation of which upon the highway would otherwise be prohibited under this section.

(5) If the department of transportation determines at any time that dangerous or unsafe conditions on a highway require particular tires, tire chains, or traction equipment for vehicles in addition to or beyond the ordinary pneumatic rubber tires, the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels.

(6) Equipment required by subsection (5)(b) or (5)(c) must conform to rules established by the department of justice.

(7) The department of transportation shall place and maintain signs and other traffic-control devices on a highway designated under subsection (5) that indicate the tire, tire chain, or traction equipment recommendation or requirement determined for vehicles. The signs or traffic-control devices may not prohibit the use of pneumatic tires embedded as provided in subsection (3) between October 1 and May 31 of each year, but when the department of transportation determines that chains are required and that no other traction equipment will suffice, the requirement is applicable to tires on driver wheels of one axle of a vehicle, including embedded tires. The signs or traffic-control devices may differentiate in recommendations or requirements for four-wheel-drive vehicles in gear.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974; R.C.M. 1947, 32-21-149(a) thru (d); amd. Sec. 1, Ch. 448, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 448 in (3), near middle of second sentence after "tire tread", inserted language concerning all season mud and snow tires; inserted (5) concerning Department establishing recommendations or requirements for use of chains or other traction devices; inserted (6) concerning conformance of equipment to Department of Justice rules; inserted (7) concerning Department maintaining signs indicating tire or traction device recommended or required on roadway; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

"School bus" defined, 20-10-101, 61-1-116.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

"Special mobile equipment" defined, 61-1-104.

"Farm tractor" defined, 61-1-109.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Pneumatic tire" defined, 61-1-125.

"Solid tire" defined, 61-1-126.

"Metal tire" defined, 61-1-127.

Violations of tire restrictions — penalty, 61-9-519.

Special permits, 61-10-146.

Powers of local authorities to regulate traffic, 61-12-101.

61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location. (1) A person may not move, or permit to be moved, any recreational vehicle, van, truck, bus, truck tractor, trailer, pole trailer, or semitrailer, as defined in this title, upon the public highways without having first equipped the rearmost wheels or set of wheels of the vehicle with fenders, splash aprons, or flaps. The fenders, splash aprons, or flaps must be designed, constructed, and attached to the vehicle in a manner that arrests and deflects dirt, mud, water, rocks, and other substances that may be picked up by the rear wheels of the vehicle and thrown into the air, as follows:

(a) If the vehicle is equipped with fenders, the fenders must extend in full width from a point above and forward of the center of the tire or tires over and to the rear of the tires.

(b) If the vehicle is equipped with splash aprons or flaps, the splash aprons or flaps must extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of the tire or tires and to the rear of the tires.

(c) If the vehicle is in excess of 8,000 pounds gross vehicle weight, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 10 inches above the surface of the highway when the vehicle is empty.

(d) If the vehicle is 8,000 pounds or less gross vehicle weight, the fenders, splash aprons, or flaps must extend downward to a point that is not more than 20 inches above the surface of the highway when the vehicle is empty.

(2) Fenders, splash aprons, or flaps, as used in subsection (1), are considered to be of sufficient size and construction as to comply with the requirements of this section, if constructed as follows:

(a) when measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, the fender, splash apron, or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(b) the fender, splash apron, or flap is so constructed that it is capable at all times of arresting and deflecting dirt, mud, water, or other substance that may be picked up and carried by the wheel or wheels.

History: En. Sec. 1, Ch. 286, L. 1969; R.C.M. 1947, 32-21-149.1(a), (b); amd. Sec. 1, Ch. 65, L. 1987; amd. Sec. 1, Ch. 791, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence, inserted "recreational vehicle, van"; and made minor changes in style.

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Bus" defined, 61-1-115.

Violations of provisions relating to fenders, splash aprons, or flaps — penalty, 61-9-515.

61-9-408. Safety glazing material in motor vehicles. (1) On and after January 1, 1956, no person shall sell any new motor vehicle as specified herein, nor shall any new motor vehicle as specified herein be registered thereafter unless such vehicle is equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields. The foregoing provisions shall apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material shall apply to all glazing material used in doors, windows, and windshields in the driver's compartments of such vehicles.

(2) The term "safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially in comparison with ordinary sheet glass or plate glass the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

History: En. Sec. 147, Ch. 263, L. 1955; R.C.M. 1947, 32-21-150.

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Bus" defined, 61-1-115.

"School bus" defined, 61-1-116.

Sales and distribution of motor vehicles, Title 61, ch. 4.

61-9-409. Seatbelts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade, or transfer from or to Montana residents at retail an automobile which is manufactured or assembled commencing with the 1966 models unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.1.

Cross-References

Sales and distribution of motor vehicles, Title 61, ch. 4.

Penalty for seatbelt violations, 61-9-516.

Montana Seatbelt Use Act, Title 61, ch. 13, part 1.

61-9-410. Specifications for seatbelts. All such safety belts must be of a type and must be installed in a manner approved by the department. The department shall establish specifications and requirements for approved types of safety belts and attachments thereto. The department will accept, as approved, all seatbelt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.2; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Penalty for seatbelt violations, 61-9-516.

61-9-411. Certain vehicles to carry flares or other warning devices. (1) No person shall operate any motor truck of 1-ton capacity or greater, passenger bus, or truck tractor upon any highway outside the corporate limits of municipalities at any time unless there shall be carried in such vehicle, except as provided in subsection (2), the following equipment:

(a) at least three flares or three red electric lanterns or three portable red emergency reflectors each of which shall be capable of being seen and distinguished at a distance of not less than 600 feet under normal atmospheric conditions at nighttime. No portable reflector unit shall be used for the purpose of compliance with the requirements of this section unless it is so designed and constructed as to display a minimum of 24 square inches of reflective surface, or two reflecting elements; one above the other, either of which shall be capable of reflecting red light clearly visible from all distances within 600 feet to 100 feet under normal atmospheric conditions at night when directly in front of lawful upper beams of headlamps;

(b) at least three red-burning fusees unless red electric lanterns or red portable emergency reflectors are carried;

(c) at least two red cloth flags, no less than 12 inches square, with standards to support such flags.

(2) No person shall operate at the time and under the conditions stated in subsection (1) any motor vehicle used for the transportation of explosives, any cargo tank truck used for the transportation of flammable liquids or compressed gases, or any motor vehicle using compressed gas as a fuel unless there shall be carried in such vehicle three red electric lanterns or three portable red emergency reflectors meeting the requirements of subsection (1), and there shall not be carried in any said vehicle any flares, fusees, or signal produced by flame.

(3) As an alternative to the equipment required in subsections (1) and (2), three emergency reflective triangles conforming with U.S. department of transportation motor vehicle safety standard 125 may be carried.

History: En. Sec. 148, Ch. 263, L. 1955; amd. Sec. 1, Ch. 108, L. 1957; amd. Sec. 1, Ch. 70, L. 1975; R.C.M. 1947, 32-21-151.

Cross-References

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Bus" defined, 61-1-115.

"Explosives" defined, 61-1-506.

"Flammable liquid" defined, 61-1-507.

61-9-412. Display of warning devices when vehicle disabled. (1) Whenever any motor truck, passenger bus, truck, tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in subsection (2):

(a) A lighted fusee, a lighted red electric lantern, or a portable red emergency reflector shall be immediately placed at the traffic side of the vehicle in the direction of the nearest approaching traffic.

(b) As soon thereafter as possible but in any event within the burning period of the fusee (15 minutes), the driver shall place three liquid burning flares (pot torches) or three lighted red electric lanterns or three portable red emergency reflectors on the traveled portion of the highway in the following order:

(i) one approximately 100 feet from the disabled vehicle in the center of the lane occupied by such vehicle and toward traffic approaching in that lane;

(ii) one approximately 100 feet in the opposite direction from the disabled vehicle and in the center of the traffic lane occupied by such vehicle;

(iii) one at the traffic side of the disabled vehicle not less than 10 feet rearward or forward thereof in the direction of the nearest approaching traffic. If a lighted red electric lantern or a red portable emergency reflector has been placed at the traffic side of the vehicle in accordance with subsection (1)(b)(i) of this section, it may be used for this purpose.

(2) Whenever any vehicle referred to in this section is disabled within 500 feet of a curve, hillcrest, or other obstruction to view, the warning signal in

that direction shall be so placed as to afford ample warning to other users of the highway but in no case less than 500 feet from the disabled vehicle.

(3) Whenever any vehicle of a type referred to in this section is disabled upon any roadway of a divided highway during the time that lights are required, the appropriate warning devices prescribed in subsections (1) and (5) shall be placed as follows:

(a) one at a distance of approximately 200 feet from the vehicle, in the center of the lane occupied by the stopped vehicle and in the direction of traffic approaching in that lane;

(b) one at a distance of approximately 100 feet from the vehicle, in the center of the lane occupied by the vehicle and in the direction of traffic approaching in that lane;

(c) one at the traffic side of the vehicle and approximately 10 feet from the vehicle in the direction of the nearest approaching traffic.

(4) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, red electric lanterns, or portable red emergency reflectors is not required, the driver of the vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, or at a distance of approximately 100 feet in advance of the vehicle, and one at a distance of approximately 100 feet to the rear of the vehicle.

(5) Whenever any motor vehicle used in the transportation of explosives or any cargo tank truck used for the transportation of any flammable liquid or compressed flammable gas, or any motor vehicle using compressed gas as a fuel, is disabled upon any highway of this state at any time or place mentioned in subsection (1) of this section, the driver of such vehicle shall immediately display the following warning devices:

(a) one red electric lantern or portable red emergency reflector placed on the roadway at the traffic side of the vehicle and two red electric lanterns or portable red reflectors, one placed approximately 100 feet to the front and one placed approximately 100 feet to the rear of the disabled vehicle in the center of the traffic lane occupied by such vehicle;

(b) flares, fusees, or signals produced by flame shall not be used as warning devices for disabled vehicles of the type mentioned in this subsection (5).

(6) The flares, fusees, red electric lanterns, portable red emergency reflectors and flags to be displayed as required in this section shall conform with the requirements of 61-9-411 applicable thereto.

History: En. Sec. 149, Ch. 263, L. 1955; R.C.M. 1947, 32-21-152.

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.
"Bus" defined, 61-1-115.
"Explosives" defined, 61-1-506.
"Flammable liquid" defined, 61-1-507.

61-9-413. Vehicles transporting explosives. (1) Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(2) Said vehicle shall be marked or placarded on each side and the rear with the word "EXPLOSIVES" in letters not less than 8 inches high, or there shall be displayed on the rear of such vehicle a red flag not less than 24 inches square marked with the word "DANGER" in white letters 6 inches high.

(3) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(4) The department is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highway as it shall deem advisable for the protection of the public.

History: En. Sec. 150, Ch. 263, L. 1955; R.C.M. 1947, 32-21-153; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

"Explosives" defined, 61-1-506.

61-9-414. Logging trucks. Every truck or truck trailer combination actively engaged in transporting logs shall be equipped as follows:

(1) (a) At least three binders shall be required as standard equipment on any truck or truck trailer combination actively engaged in transporting logs upon the public highways of the state.

(b) Such binders shall be of steel chain or steel cable.

(c) The minimum diameter of any portion of such binders shall be three-eighths inch.

(d) Such binders shall be of sufficient length to encompass any load when secured by a fastener.

(2) (a) Binders used to secure loads of logs together shall be fastened by means of a fastener.

(b) The minimum diameter of the portions of the fastener under direct stress from the binder shall be three-eighths inch.

(c) The handle, or leverage portion of the fastener, when in use in tightening and holding the binder shall be securely fastened to the binder or to the fastener in such a way that it cannot be accidentally loosened.

(3) At least two binders shall be in use on all loads. Such binders shall be placed as close as reasonably possible to the front and rear bunks.

(4) In the event short logs are loaded on top of longer logs, sufficient binders shall be used to secure both ends of such short logs to the main body of the load. No logs may extend laterally beyond the stakes which form the outer boundary of the load at the top of such stakes. Logs or poles loaded above the tops of the stakes shall be loaded in a pyramidal fashion.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part).

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Pole trailer" defined, 61-1-114.

61-9-415. Slow-moving vehicles. (1) It shall be unlawful after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural, or county roads and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than 25 miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than 25 miles per hour, unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (2) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(2) The emblem required by subsection (1) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of 14 inches and an altitude of 12 inches. Such triangle shall be bordered with reflective red strips having a minimum width of 1 3/4 inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of 14 inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of 3 to 5 feet above the roadway, and shall be maintained in a clean, reflective condition.

(3) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with 61-8-303 does not have a clear lane for passing as required by 61-8-325, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(b), (c), (e).

Cross-References

Use of motorized wheelchairs on public streets, 49-4-311.

"Special mobile equipment" defined, 61-1-104.

"Flag person" defined, 61-1-411.

"Flag vehicle" defined, 61-1-412.

Traffic laws applicable to persons driving animal-drawn vehicles, 61-8-108.

Minimum speed regulations, 61-8-311.

Violations of general lighting requirements and slow-moving vehicle provisions — penalty, 61-9-513.

61-9-416. Commercial tow truck requirements. (1) A commercial tow truck used to tow a vehicle by means of a crane, hoist, towbar, towline, or dolly must be:

(a) equipped with and carry not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) equipped with at least two highway warning signs of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department. When a motor vehicle is disabled on the highway, the tow truck operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(c) equipped with and carry a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) equipped with a lamp emitting a flashing or steady red light mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted in such a manner that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in any position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red lights of an approved type may be displayed at either side or both sides of the tow truck as the case may warrant during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) equipped with one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

(f) equipped with and carry a shovel, and whenever practical the tow truck operator engaged to remove any disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle;

(g) equipped with and carry a portable electrical extension cord for use in displaying a light on the rear of the disabled vehicle. The length of the extension cord may not be less than the length of the combined vehicles, and whenever a disabled vehicle is towed during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted, the tow truck operator shall provide for the rear light by means of the extension cord referred to in this subsection.

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of any portion of the roadway outside a business or residence district, place a highway warning sign as required in subsection (1)(b):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and

(b) in an area in which the posted speed limit is more than 45 miles an hour, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle.

(3) The owner or operator of a commercial tow truck who complies with the requirements of this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

History: En. Sec. 1, Ch. 201, L. 1959; R.C.M. 1947, 32-21-161; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 27, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted "truck" for "car"; in first sentence of (1)(b) inserted language establishing dimensions, lettering, and color for highway warning signs, inserted third sentence pertaining to wording on highway warning signs, and deleted requirement that warning signs be placed 200 feet in front of and behind disabled vehicle when the rendering of assistance necessitates obstruction of portion of roadway outside business or residence district; in (1)(c), before "fire extinguisher", inserted "dry chemical", and substituted "5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department" for "2 quart capacity of a type capable of extinguishing a fire"; inserted (2) pertaining to placement of highway warning signs in front of and behind disabled vehicles when the rendering of assistance necessitates the obstruction of portion of roadway outside a business or residence district; and made minor changes in style. Amendment effective February 15, 1991.

Cross-References

"Emergency service vehicles" defined, 61-1-120.

Violation of towing requirements — penalty, 61-9-517.

61-9-417. Headgear required for minor motorcycle riders. An operator and passenger under 18 years of age of any motorcycle or quadricycle operated upon the streets or highways of this state shall wear protective headgear upon the head. The headgear shall meet standards established by the department of justice.

History: En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(1); amd. Sec. 45, Ch. 516, L. 1985.

Cross-References

"Motorcycle" defined, 61-1-105.

"Quadricycle" defined, 61-1-133.

Riding on motorcycles, 61-8-359.

Violation of motorcycle requirements — penalty, 61-9-518.

61-9-418. Motorcycle noise suppression devices. All motorcycles or quadricycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order and in constant operation. In addition, all motorcycles and quadricycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at 50 feet distant from the closest point to the motorcycle or quadricycle:

(1) any cycle manufactured prior to 1970	92 db(A)
(2) any cycle manufactured after 1969 but prior to 1973	88 db(A)
(3) any cycle manufactured after 1972 but prior to 1975	86 db(A)
(4) any cycle manufactured after 1974 but prior to 1978	80 db(A)
(5) any cycle manufactured after 1977 but prior to 1988	75 db(A)
(6) any cycle manufactured after 1987	70 db(A)

History: **En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(2); amd. Sec. 46, Ch. 516, L. 1985.**

Cross-References
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.
Violation of motorcycle requirements — penalty, 61-9-518.

61-9-419. "Properly restrained" defined. As used in 61-9-420 through 61-9-423, "properly restrained" means fastened in a manner prescribed by the manufacturer of the system which permits the system to act as a body restraint, but does not mean a system in which the only body restraint is a safety belt of the type specified in 61-9-410.

History: **En. Sec. 1, Ch. 177, L. 1983.**

Cross-References
Seatbelts required in new vehicles, 61-9-409.

61-9-420. Child safety restraint systems — standards — exemptions. (1) No resident of Montana who is the parent or legal guardian of a child under the age of 2 may transport the child in a motor vehicle owned by the resident or his spouse unless the child is properly restrained.

(2) No resident of Montana who is the parent or legal guardian of a child between 2 and 4 years old or weighing less than 40 pounds may transport the child in a motor vehicle owned by the resident or his spouse unless the child is properly restrained or is restrained in a safety belt of the type specified in 61-9-410.

(3) The department shall by rule establish standards in compliance with 61-9-419 through 61-9-423 and applicable federal standards for approved types of child safety restraint systems purchased after January 1, 1984.

(4) No resident or his spouse is required to have more than three child safety restraint systems in a vehicle.

(5) The department may by rule exempt from the requirements of subsection (1) any child who because of a physical or medical condition or body size cannot be placed in a child safety restraint system or safety belt.

History: **En. Sec. 2, Ch. 177, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.**

Cross-References
Residence — rules for determining, 1-1-215.
Adoption and publication of rules, Title 2, ch. 4, part 3.
"Motor vehicle" defined, 61-1-102.

61-9-421. Certain vehicles exempt. Section 61-9-420 is not applicable to a vehicle that:

(1) is a motorbus, schoolbus, taxicab, moped, quadricycle, or motorcycle or is not required to be equipped with safety belts under 49 CFR 571 as it reads on January 1, 1984; or

(2) has a seating capacity as designated by the manufacturer of two persons and there are two persons 4 years of age or older in the vehicle.

History: **En. Sec. 3, Ch. 177, L. 1983; amd. Sec. 47, Ch. 516, L. 1985.**

Cross-References
"School bus" defined, 20-10-101, 61-1-116.
"Motorcycle" defined, 61-1-105.
"Motor-driven cycle" defined, 61-1-106.
"Bus" defined, 61-1-115.

"Bicycle" defined, 61-1-123.
"Quadricycle" defined, 61-1-133.

61-9-422. Evidence admissible without presumption of negligence. Evidence of compliance or failure to comply with 61-9-420 is admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, but failure to comply with 61-9-420 does not alone constitute negligence.

History: En. Sec. 4, Ch. 177, L. 1983.

Cross-References

Evidence — preliminary questions of admissibility, Rule 104, M.R.Ev. (see Title 26, ch. 10).

Liability for negligence as well as willful acts, 27-1-701.

61-9-423. Penalty. Violation of 61-9-420 is punishable as follows:

(1) On initial violation a citation shall be issued. No penalty may be assessed if the violation of 61-9-420 is corrected within 30 days by providing the proper court with proof that a child safety restraint system meeting the requirements of 61-9-420 was purchased or leased and properly installed in the vehicle. If not corrected, the violation shall be punishable by a fine of not less than $10 or more than $25.

(2) Subsequent violation within 3 years is punishable by a fine of not less than $25 or more than $100.

History: En. Sec. 5, Ch. 177, L. 1983; amd. Sec. 1, Ch. 161, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-9-424 through 61-9-427 reserved.

61-9-428. Window tinting and sunscreening — waiver — conditions. The highway patrol or a local law enforcement agency may grant a waiver of the standards of 61-9-405(4) for reasons of safety or security or for medical reasons based on an affidavit signed by a licensed physician. The waiver must be in writing and must include the vehicle identification number, registration number, or other description to clearly identify the motor vehicle to which the waiver applies and the date issued, the name of the owner of the vehicle, the reason for granting the waiver, the dates the waiver is effective, and the signature of the law enforcement officer granting the waiver. The highway patrol or the local law enforcement agency shall keep a copy of the waiver until the waiver expires.

History: En. Sec. 2, Ch. 777, L. 1991.

61-9-429. Window tinting and sunscreening — penalty. (1) A person who owns or operates a motor vehicle in violation of 61-9-405(4) is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) A person who applies a sunscreening material or a glass-plastic glazing material in a manner that results in a motor vehicle having a window that violates the requirements of 61-9-405(4) is guilty of a misdemeanor and is punishable as provided in 46-18-212.

History: En. Sec. 3, Ch. 777, L. 1991.

Part 5

Enforcement — Penalties

61-9-501. Inspections by officers of the department. (1) The department or its agents may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law or that its equipment is not in proper adjustment or repair require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(2) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such inspection may issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(3) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment the officer shall give a written notice to the driver and shall send a copy to the department. Said notice shall specify the deficiencies and require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment within 5 days.

History: En. Sec. 152, Ch. 263, L. 1955; R.C.M. 1947, 32-21-155; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor carriers safety — enforcement by Highway Patrol, 44-1-1005.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-9-502. Semiannual inspection of school buses. (1) The department shall perform the semiannual inspection of school buses, one of which shall be at least 30 days prior to the beginning of the school term, and reinspect the buses, if necessary, before the beginning of the school term.

(2) The department's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973; R.C.M. 1947, 32-21-155.1; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

School bus requirements, 20-10-102.

"School bus" defined, 61-1-116.

61-9-503. Owners and drivers to comply with inspection laws. (1) No person driving a vehicle may refuse to submit the vehicle to an inspection and test when required to do so by the department or an authorized officer or employee of the department.

(2) Every owner or driver, upon receiving a notice as provided in 61-9-501, shall comply therewith and shall within 5 days have the deficiencies corrected and forward notification of the correction to the department. In lieu of

compliance with this subsection, the vehicle may not be operated, except as provided in subsection (3).

(3) No person may operate any vehicle after receiving a notice with reference thereto as above provided except as may be necessary to return the vehicle to the residence or place of business of the owner or driver, if within a distance of 20 miles, or to a garage until the vehicle and its equipment have been placed in proper repair and adjustment and otherwise made to conform to the requirements of this chapter.

History: En. Sec. 153, Ch. 263, L. 1955; R.C.M. 1947, 32-21-156; amd. Sec. 73, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Motor carriers safety — enforcement by Highway Patrol, 44-1-1005.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-9-504. Rules. The department is hereby empowered to make additional rules governing the use of safety equipment on motor vehicles, vehicles, and/or combination of vehicles, that is, trailer hitches, safety chains, mounts, tow bars, and other similar equipment as it shall deem advisable for the protection of the public.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-9-505 through 61-9-510 reserved.

61-9-511. Violation of chapter — penalty. (1) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is declared to be a felony.

(2) A person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction be punished by a fine of not less than $10 or more than $100. For a second conviction within 1 year, the person shall be punished by a fine of not less than $25 or more than $200. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500.

(3) On failure of payment of fines, the offender in cases of misdemeanor shall be imprisoned in the county jail in the county in which the offense has been committed. The imprisonment shall be computed upon the basis of $25 of the fine for each day's incarceration.

(4) Upon conviction, the court costs or any part of the court costs may be assessed against the defendant in the discretion of the court.

History: En. Sec. 154, Ch. 263, L. 1955; R.C.M. 1947, 32-21-157; amd. Sec. 3, Ch. 40, L. 1991; amd. Sec. 2, Ch. 109, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 40 in (1), before "declared", deleted "by this chapter or other law of this state"; in (2), at end of first sentence after "$100", deleted "or by imprisonment for not more than 10 days", at end of second sentence, after "$200", deleted "or by imprisonment for not more than 20 days or by both such fine and imprisonment", and at end of third sentence, after "$500", deleted "or by imprisonment for not more than 6 months or by both fine and imprisonment"; in (3) increased basis of fine for 1 day of incarceration from "$2" to "$25"; and made minor changes in style.

Chapter 109 in (3) increased basis of fine for 1 day of incarceration from "$2" to "$25".

Cross-References

County jails, Title 7, ch. 32, part 22.

Allowable court costs, Title 25, ch. 10, part 2.

Classification of offenses, 45-1-201.

"Felony" defined, 45-2-101.

"Misdemeanor" defined, 45-2-101.

61-9-512. Violation of rules — penalty. (1) Any violation of any rules adopted by the department is a misdemeanor.

(2) A person convicted of a violation of any standard adopted pursuant to 44-1-1005 shall be fined not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

(3) The penalties provided in subsection (2) apply to any motor carrier that is a corporation subject to the standards adopted pursuant to 44-1-1005. The penalties may be imposed against:

(a) a director or officer of the corporation;

(b) any receiver, trustee, lessee, agent, or person acting for or employed by the corporation; or

(c) any broker of property or officer, agent, or employee thereof.

History: En. Sec. 119, Ch. 263, L. 1955; amd. Sec. 1, Ch. 233, L. 1959; amd. Sec. 1, Ch. 182, L. 1974; R.C.M. 1947, 32-21-122(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 386, L. 1987; amd. Sec. 71, Ch. 83, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-9-513. Violation of general lighting requirement and slow-moving vehicle provisions — penalty. Any person violating the provisions of 61-9-216 or 61-9-415 shall be subject to penalty as provided in 61-9-511.

History: En. Sec. 127, Ch. 263, L. 1955; amd. Sec. 1, Ch. 247, L. 1969; R.C.M. 1947, 32-21-130(d).

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Minimum speed regulations, 61-8-311.

61-9-514. Unauthorized use of firefighter's private vehicle — penalty. Any person violating the provisions of 61-9-227 is guilty of a misdemeanor.

History: En. Sec. 2, Ch. 154, L. 1957; R.C.M. 1947, 32-21-141.2.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Unauthorized use of motor vehicles, 45-6-308.

Misdemeanor — no penalty specified, 46-18-212.

61-9-515. Violations of provisions relating to fenders, splash aprons, or flaps — penalty. Any person violating any of the provisions of 61-9-407 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $10 or more than $25.

History: En. Sec. 1, Ch. 286, L. 1969; R.C.M. 1947, 32-21-149.1(c); amd. Sec. 4, Ch. 40, L. 1991.

Compiler's Comments

1991 Amendment: At end, after "$25", deleted "or by imprisonment in the county jail for a period of not more than 30 days or by both such fine and imprisonment"; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-9-516. Penalty for seatbelt violations. Any person who shall violate any of the provisions of 61-9-409 and 61-9-410 shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed $100.

History: En. Sec. 3, Ch. 115, L. 1965; R.C.M. 1947, 32-21-150.3.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-9-517. Violation of towing requirements — penalty. Any person violating any of the provisions of 61-9-416 shall be deemed guilty of a misdemeanor and subject to a penalty not to exceed $100.

History: En. Sec. 2, Ch. 201, L. 1959; R.C.M. 1947, 32-21-162.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-9-518. Violation of motorcycle or quadricycle requirements — penalty. (1) A person convicted of the violation of 61-9-417 shall be fined $5.

(2) A person convicted of the violation of 61-9-418 shall be punished by a fine of not less than $10 or more than $100 for the first conviction. For a second conviction within 1 year, the person shall be punished by a fine of not less than $25 or more than $200. Upon a third or subsequent conviction within 1 year after the first conviction, the person shall be punished by a fine of not less than $50 or more than $500.

History: En. Sec. 1, Ch. 398, L. 1973; amd. Sec. 1, Ch. 179, L. 1974; amd. Sec. 1, Ch. 273, L. 1974; amd. Sec. 1, Ch. 54, L. 1977; R.C.M. 1947, 32-21-105.1(3), (4); amd. Sec. 5, Ch. 40, L. 1991.

Compiler's Comments

1991 Amendment: In (2), in first sentence after "$100", deleted "or by imprisonment for not more than 10 days or by both such fine and imprisonment", in second sentence, after "$200", deleted "or by imprisonment for not more than 20 days or by both such fine and imprisonment", and in third sentence, after "$500", deleted "or by imprisonment for not more than 6 months or by both such fine and imprisonment"; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

"Motorcycle" defined, 61-1-105.

61-9-519. Violation of tire restrictions — penalty. A person violating 61-9-406 is guilty of a misdemeanor and is subject to penalty as provided in 61-9-511.

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967; amd. Sec. 1, Ch. 194, L. 1971; amd. Sec. 1, Ch. 192, L. 1973; amd. Sec. 67, Ch. 316, L. 1974; R.C.M. 1947, 32-21-149(e); amd. Sec. 6, Ch. 40, L. 1991.

Compiler's Comments

1991 Amendment: After "misdemeanor" inserted penalty clause.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

61-9-520. Penalty. (1) A person violating the provisions of 61-9-406(5) through (7) is guilty of the nonmoving offense of failure to use chains or approved traction devices when required and upon conviction shall be punished by a fine of $25, and no jail sentence may be imposed. Bond for this offense shall be $25.

(2) A violation of 61-9-406(5) through (7) is not a misdemeanor subject to 45-2-101, 61-9-511, 61-9-512, or 61-9-519.

History: En. Sec. 2, Ch. 448, L. 1991.

CHAPTER 10

SIZE — WEIGHT — LOAD

Part 1 — Standards, Permits, and Fees

61-10-101. Standards of maximum dimensions, weights, etc.
61-10-102. Width.
61-10-103. Height.
61-10-104. Length — definitions.
61-10-105. Permissible loads.
61-10-106. Measuring distance between axles.
61-10-107. Maximum gross weight — when permit required.
61-10-108. Reduction under special circumstances.
61-10-109. Operation without special permits prohibited.
61-10-110. Federal law.
61-10-111 and 61-10-112 reserved.
61-10-113. Issuance of permits for overweight and oversize loads — interstate agreements.
61-10-114 through 61-10-120 reserved.
61-10-121. Permits for excess size and weight.
61-10-122. Discretion of issuer — conditions.
61-10-123. Haystack movers.
61-10-124. Special permits — fee — cranes.
61-10-125. Other fees.
61-10-126. Deposit of fees.
61-10-127. Permits issued to governmental entities.
61-10-128. When authorities may restrict right to use roadway.
61-10-129. Rules regarding overlength vehicles.
61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable.
61-10-131 through 61-10-140 reserved.
61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds.
61-10-142. Display of permit.
61-10-143. Confiscation — action by commission.
61-10-144. Violation of standards — tolerance.
61-10-145. Penalties.
61-10-146. Special permits — misrepresentations and violations as misdemeanor.
61-10-147. Penalties for using highway when use is restricted.
61-10-148. Disposition of fines and forfeited bonds.
61-10-149 through 61-10-154 reserved.
61-10-155. Rulemaking authority.

Part 2 — Gross Vehicle Weight Licensing Requirements

61-10-201. Gross weight fees on motortrucks and truck tractors.
61-10-202. Gross weight fees on trailers and semitrailers.
61-10-203. Alternative gross weight fees on truck trailer combinations.
61-10-204. Special fees — pole trailers, lowboys, and livestock.
61-10-205. Special fees — haulers of ready-mix concrete — haulers of fertilizer.
61-10-206. Special fees — certain farm vehicles.
61-10-207. Special fees — buses.
61-10-208. Special fees — housetrailers.
61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee.
61-10-210. Three unit combination — fees in lieu of gross weight fees — marking.
61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states.
61-10-212. Temporary trip permits showing payment of fees — display.
61-10-213. Time for payment of fees by nonresidents — disposition.
61-10-214. Exemptions.
61-10-215. Additional tax by municipalities prohibited — exceptions.
61-10-216 through 61-10-220 reserved.
61-10-221. Purpose of fees.
61-10-222. Time for payment of fees.
61-10-223. Expiration date.
61-10-224. GVW license transferable.
61-10-225. Disposition of fees collected by county treasurer.
61-10-226. Deposit of state highway money.
61-10-227. Blank forms furnished county treasurers.
61-10-228 through 61-10-230 reserved.
61-10-231. Enforcement.
61-10-232. Violation — penalty.
61-10-233. Excess weight — penalties.

Parts 3 through 10 reserved

Part 11 — Multistate Highway Transportation Agreement

61-10-1101. Multistate Highway Transportation Agreement — enactment and text.

Chapter Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Enforcement of motor carriers law, 44-1-1005.

Regulation of motor carriers, Title 69, ch. 12.

Part 1

Standards, Permits, and Fees

Part Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

61-10-101. Standards of maximum dimensions, weights, etc. The standards provided for in 61-10-102 through 61-10-110 govern the maximum dimensions, weights, and other characteristics of motor vehicles operating over the highways in the state to the exclusion of other standards or other requirements respecting the subject matter.

History: En. 32-1123.1 by Sec. 12, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.1.

Cross-References

Gross weight fees on motortrucks and truck tractors, 61-10-201.

Gross weight fees on trailers and semitrailers, 61-10-202.

Three unit combination — fees in lieu of gross weight fees — marking, 61-10-210.

61-10-102. Width. (1) Except as provided in subsection (2), no vehicle, including a bus, unloaded or with load, may have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 feet wide, it must be preceded by flagman escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations. Lights which meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flagman escorts.

(b) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(3) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

History: En. 32-1123.3 by Sec. 14, Ch. 316, L. 1974; amd. Sec. 1, Ch. 314, L. 1975; R.C.M. 1947, 32-1123.3; amd. Sec. 74, Ch. 421, L. 1979; amd. Sec. 1, Ch. 109, L. 1983; amd. Sec. 1, Ch. 340, L. 1989.

Cross-References

Highway Patrol — enforcement of motor carriers law, 44-1-1005.

"Bus" defined, 61-1-115.

"Implement of husbandry" defined, 61-1-121.

"Flag person" defined, 61-1-411.

61-10-103. Height. A vehicle, unladen or with load, may not exceed a height of 14 feet.

History: En. 32-1123.4 by Sec. 15, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.4; amd. Sec. 1, Ch. 73, L. 1987.

61-10-104. Length — definitions. (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 45 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 ½ feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have a length in excess of 65 feet.

(5) As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(c) "Length" means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer.

History: **En. 32-1123.5 by Sec. 16, Ch. 316, L. 1974; amd. Sec. 1, Ch. 20, L. 1975; R.C.M. 1947, 32-1123.5; amd. Sec. 2, Ch. 40, L. 1981; amd. Sec. 1, Ch. 487, L. 1983; amd. Sec. 1, Ch. 121, L. 1989; amd. Sec. 1, Ch. 327, L. 1991; amd. Sec. 1, Ch. 672, L. 1991.**

Compiler's Comments

1991 Amendments: Chapter 327 in (3), at end, increased allowable overall length from 65 feet to 75 feet; and made minor changes in style.

Chapter 672 in (1), at end, increased maximum overall length from 40 feet to 45 feet; in (2)(a), at end before "combination length limit", substituted "a" for "an overall"; in (2)(c) and (3), after "have", substituted "a combination length" for "an overall length, inclusive of front and rear bumpers"; in (4) substituted "a length" for "an overall length, inclusive of front and rear bumpers"; and inserted (5) defining combination length, combined trailer length, length, and Rocky Mountain double.

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Dolly or converter gear" defined, 61-1-113.
"Bus" defined, 61-1-115.
Lamp or flag on projecting load, 61-9-213.

61-10-105. Permissible loads. (1) An axle may not carry a load in excess of 18,000 pounds. An axle load is defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) (a) The gross weight of a group of axles of a vehicle or combination of vehicles, if the distance between first and last axles of a group of axles is 18 feet or less, and the gross weight of a vehicle if the distance between the first and last axles of all the axles of the vehicle is 18 feet or less, may not exceed that set forth in the following table of weights:

Distance in Feet Between the First and Last Axles of any Group of Axles of any Vehicle or Combination of Vehicles or Between the First and Last Axles of all of the Axles of any Vehicle.	Maximum Gross Weight, in Pounds, of any Group of Axles of any Vehicle or Combination of Vehicles, or of any Vehicle.
4	32,000
5	32,000
6	32,200
7	32,900
8	33,600
9	34,300
10	35,000
11	35,700
12	36,400
13	37,100
14	43,200
15	44,000
16	44,800
17	45,600
18	46,400

(b) The gross weight of a vehicle or combination of vehicles, if the distance between the first and last axles of the vehicle or combination of vehicles is more than 18 feet, may not exceed that set forth in the following table of weights:

Distance in Feet Between the First and Last Axles of all the Axles of a Vehicle or Combination of Vehicles.	Maximum Gross Weight, in Pounds, of any Vehicle or Combination of Vehicles.
18	46,400
19	47,200
20	48,000
21	48,800
22	49,600
23	50,400
24	51,200
25	55,250
26	56,100
27	56,950
28	57,800
29	58,650
30	59,500
31	60,350
32	61,200
33	62,050
34	62,900
35	63,750
36	64,600
37	65,450
38	66,300
39	68,000
40	70,000
41	72,000
42	73,280
43	73,280
44	73,280
45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000

56	76,400
57	76,800

(3) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the following table showing credit in inches allowed for calculating total pounds permissible per tire:

Multiply Inches Allowed by Load Limit Per Inch of Tire Width

Tubeless Tire Size	Conventional Replacement Tubed Tire Size	Inches Credit Allowed When Calculating Total Pounds Permissible Per Tire
6.00-16	6.00-16	6
6.50-16	6.50-16	6-1/2
7-17.5	7.00-15	7
7-22.5	6.50-20 & 7.00-20	7
8-17.5	7.00-16, 7.50-15 & 7.50-16	7-1/2
8-19.5	7.00-17 & 7.50-17	7-1/2
8-22.5	7.50-20	7-1/2
9-22.5	8.25-20	8-1/4
10-22.5	9.00-20	9
11-22.5	10.00-20	10
11-24.5	10.00-22	10
12-22.5	11.00-20	11
12-24.5	11.00-22	11

Duplex Tires (new type single tires to replace dual tires)

Load limits shall be computed for duplex tires on the number of inches shown on tire marking. They are not to be computed on the basis of inches of tire replaced.

Example:

18" duplex tire at 400 pounds for inch width — 7,200 pounds

History: En. 32-1123.6 by Sec. 17, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.6; amd. Sec. 1, Ch. 366, L. 1981.

Cross-References

"Axle" defined, 61-1-128.

61-10-106. Measuring distance between axles. The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half foot, the next larger whole number shall be used.

History: En. 32-1123.8 by Sec. 19, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.8.

Cross-References

Systems of weights and measures, 30-12-102.

"Axle" defined, 61-1-128.

61-10-107. Maximum gross weight — when permit required. (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of transportation based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee is $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify and permits issued under 61-10-124(6) must specify highway routing.

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading is for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes.

History: En. 32-1123.7 by Sec. 18, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.7; amd. Sec. 3, Ch. 40, L. 1981; amd. Sec. 2, Ch. 366, L. 1981; amd. Sec. 1, Ch. 392, L. 1981; amd. Sec. 2, Ch. 487, L. 1983; amd. Sec. 3, Ch. 474, L. 1987; amd. Sec. 1, Ch. 235, L. 1989; amd. Sec. 49, Ch. 16, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 16 in (3) corrected citation to subsection of 61-10-124; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Classification — highways and roads, 60-1-201.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

"Axle" defined, 61-1-128.

61-10-108. Reduction under special circumstances. The maximum axle and axle group loads stated in 61-10-105 are subject to reasonable reduction in the discretion of the department of transportation during periods when road subgrades have been weakened by water saturation or other causes.

History: En. 32-1123.9 by Sec. 20, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.9; amd. Sec. 117, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

"Axle" defined, 61-1-128.

61-10-109. Operation without special permits prohibited. The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits specified in 61-10-101 through 61-10-108 is permitted only if authorized by special permit issued by the department of transportation or its agents or the highway patrol.

History: En. 32-1123.10 by Sec. 21, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.10; amd. Sec. 75, Ch. 421, L. 1979; amd. Sec. 4, Ch. 40, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway Patrol, Title 44, ch. 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

61-10-110. Federal law. Sections 61-10-101 through 61-10-109 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load, or size in excess of that authorized in those sections, or the operation of a combination of vehicles on the national system of interstate and defense highways having a gross weight or size in excess of that permitted by law in this state before July 1, 1956, or by federal law or regulation in excess thereof, which is adopted. If federal law allows establishment of size and weight limits in excess of those permitted in those sections, without penalty or denial of federal funds for highway purposes, the department of transportation may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal-aid highway funds.

History: En. 32-1123.11 by Sec. 22, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.11; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Federal-aid highway funds, Title 60, ch. 3, part 1.

Gross weight fees on motortrucks and truck tractors, 61-10-201.

Gross weight fees on trailers and semitrailers, 61-10-202.

Three unit combination — fees in lieu of gross weight fees — marking, 61-10-210.

61-10-111 and 61-10-112 reserved.

61-10-113. Issuance of permits for overweight and oversize loads — interstate agreements. The department of transportation may enter into agreements with other states to provide for the issuance of permits for overweight and oversize loads, as authorized by the laws and rules of each state.

History: En. Sec. 1, Ch. 24, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

Name Change: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-10-114 through 61-10-120 reserved.

61-10-121. Permits for excess size and weight. (1) Upon application and with good cause shown, the department of transportation and local authorities in their respective jurisdictions may issue telephonically or in writing a special permit authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department may issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit must be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue to dealers in implements of husbandry and self-propelled machinery oversize permits, which may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday and expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

History: En. 32-1127.1 by Sec. 27, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.1; amd. Sec. 76, Ch. 421, L. 1979; amd. Sec. 1, Ch. 595, L. 1979; amd. Sec. 1, Ch. 166, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 166 in (1), at beginning of first sentence, inserted "Upon application and with good cause shown", before "issue", deleted "in their discretion, upon application in writing and with good cause shown", and after "issue" inserted "telephonically or in writing"; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Municipal regulation of motor vehicles, 7-14-4103.

Casualty insurance, Title 33, ch. 23.

Mandatory liability protection, Title 61, ch. 6, part 3.

Offenses for which arrest authorized, 61-12-206.

61-10-122. Discretion of issuer — conditions. The department of transportation or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday. No permit may be denied to dealers in implements of husbandry and self-propelled machinery solely on the grounds that the travel may take place on a Saturday or Sunday.

History: En. 32-1127.2 by Sec. 28, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.2; amd. Sec. 2, Ch. 595, L. 1979; amd. Sec. 118, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

"Implement of husbandry" defined, 61-1-121.

Transportation of vehicles, Title 61, ch. 4, part 3.

61-10-123. Haystack movers. A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to 61-10-121 through 61-10-127, except as follows:

(1) The vehicle, loaded or unloaded, may not exceed 55 feet in length or 20 feet in width.

(2) A single load may not be moved on the vehicle a distance greater than 75 miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One car shall precede the vehicle by not less than 100 yards or more than one-fourth mile, and one shall follow the vehicle at a distance not less than 100 yards or more than one-fourth mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of 35 miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

History: En. 32-1127.4 by Sec. 30, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.4.

Cross-References

"Controlled-access highway" defined, 61-1-211.

Special speed limitations, 61-8-313.

61-10-124. Special permits — fee — cranes. (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(3) (a) Except as provided in subsections (3)(b), (3)(d), (6), and (7), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (6) and (7). Special permits for vehicle combinations may specify and special permits under subsections (6) and (7) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and 61-10-202 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) no individual cargo unit of the combination may exceed 28 ½ feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(7) The department of transportation may issue special permits under subsection (6) for vehicle combinations consisting of a truck-trailer-trailer if:

(a) the vehicle combination's overall length inclusive of front and rear bumpers is not more than 95 feet;

(b) a person, firm, or corporation applying for a permit under this subsection (7) operated the truck-trailer-trailer combination before July 1, 1987;

(c) truck-trailer-trailer operations are restricted to the specified routes those vehicles operated on before July 1, 1987; and

(d) a person, firm, or corporation applying for a permit provides the department of transportation with an affidavit designating the routes the vehicle operated on before July 1, 1987.

History: (1)En. Sec. 1, Ch. 248, L. 1987; (2) thru (4)En. 32-1127.3, 32-1127.5 by Secs. 29, 31, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.3, 32-1127.5(part); amd. Sec. 77, Ch. 421, L. 1979; amd. Sec. 3, Ch. 595, L. 1979; amd. Sec. 5, Ch. 40, L. 1981; amd. Sec. 1, Ch. 462, L. 1983; amd. Sec. 3, Ch. 487, L. 1983; amd. Sec. 2, Ch. 73, L. 1987; amd. Sec. 2, Ch. 248, L. 1987; amd. Sec. 119, Ch. 370, L. 1987; amd. Sec. 2, Ch. 474, L. 1987; amd. Sec. 2, Ch. 437, L. 1989; amd. Sec. 1, Ch. 320, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 672, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 320 in (3)(a), in three places, inserted reference to subsection (7); inserted (7) to allow issuance of special permits for certain truck-trailer-trailer combinations operated before July 1, 1987; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Chapter 672 in (3)(a) inserted third and fourth sentences concerning combined trailer length and semitrailer cargo unit length of Rocky Mountain double and excepting Rocky Mountain double from combination length limit; in (3)(c), near beginning after "gross weight", substituted "fees required by 61-10-201 and 61-10-202" for "fee required by 61-10-203"; and in (3)(d), near beginning before "length", inserted "combination".

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section by Ch. 672 is effective January 1, 1992.

Cross-References

"Implement of husbandry" defined, 61-1-121.

"Public highway" defined, 61-1-202.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

Transportation of vehicles, Title 61, ch. 4, part 3.

61-10-125. Other fees. In addition to the permit fee, there shall be charged for single trip permits, for the excess load over the gross allowable load or the sum of the excess axle loads, whichever is greater:

(1) $10 for distances to and including 100 miles;

(2) $30 for distances from 101 to 199 miles; and

(3) $50 for distances over 200 miles traveled.

History: En. 32-1127.5 by Sec. 31, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.5(part); amd. Sec. 6, Ch. 40, L. 1981.

Cross-References

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

61-10-126. Deposit of fees. All fees collected under 61-10-101 through 61-10-125 shall be forwarded to the state treasurer for deposit in the state highway account in the state special revenue fund.

History: En. 32-1127.10 by Sec. 36, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.10; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

61-10-127. Permits issued to governmental entities. Permits issued to the United States government, states, counties, cities, and their political subdivisions shall be issued without fee for a term beginning with the date of issuance and expiring December 31.

History: En. 32-1127.6 by Sec. 32, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.6.

Cross-References

Public-owned vehicles exempt from license or registration fees, 61-3-321.

61-10-128. *(Temporary)* **When authorities may restrict right to use roadway.** (1) Neither the department nor a local authority may alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

(3) Neither the department nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest nonrestricted road; and

(c) the driver has in his possession a federal-state inspection certificate issued for the load.

(4) A permit issued under subsection (3) may be revoked for violating any condition of the permit. *(Terminates June 30, 1993—sec. 2, Ch. 476, L. 1991.)*

61-10-128. *(Effective July 1, 1993)* **When authorities may restrict right to use roadway.** (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles, or impose limitations on their weight on designated highways. These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

History: (1)En. 32-1123.12 by Sec. 23, Ch. 316, L. 1974; Sec. 32-1123.12, R.C.M. 1947; (2)En. Sec. 7, Ch. 171, L. 1931; re-en. Sec. 1751.7, R.C.M. 1935; amd. Sec. 6, Ch. 184, L. 1939; amd. Sec. 37, Ch. 316, L. 1974; Sec. 32-1128, R.C.M. 1947; R.C.M. 1947, 32-1123.12, 32-1128; amd. Sec. 1, Ch. 57, L. 1981; amd. Sec. 120, Ch. 370, L. 1987; amd. Sec. 1, Ch. 468, L. 1987; amd. Sec. 1, Ch. 476, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 476 in (3), in introductory clause, substituted "seed potatoes" for "agricultural seeds"; inserted (3)(b) regarding operation of a vehicle under permit regardless of gross weight; inserted (4) regarding revocation of the permit; and made minor changes in style. Amendment effective April 20, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Termination Date Extended: Section 2, Ch. 476, L. 1991, amended sec. 1, Ch. 237, L. 1989, which extended the termination date for this section, established in sec. 4, Ch. 468, L. 1987, and provided: "This act terminates June 30, 1993."

Cross-References

Municipal ordinances, 7-5-4201.

"Truck" defined, 61-1-107.

Traffic regulation provisions uniform throughout state — power of local authoritites, 61-8-103.

Department of Transportation to sign all state highways, 61-8-203.

When local authorities may and shall alter limits, 61-8-310.

Powers of local authorities to regulate traffic, 61-12-101.

61-10-129. Rules regarding overlength vehicles. The department of transportation may adopt rules to implement 61-10-124 and may by rule prescribe standards for the qualifications of drivers operating special vehicle combinations under 61-10-124 and for the equipping and operation of such combinations to enhance highway traffic safety.

History: En. Sec. 5, Ch. 474, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 3, Ch. 672, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Chapter 672 in two places deleted reference to subsection (4) of 61-10-124.

61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable. (1) In lieu of the taxes required by 15-24-301 and in lieu of motor vehicle license fees, gross vehicle weight fees, and overwidth, overlength, and overheight permits provided for in Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state may pay a special permit fee of $40 per unit. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth, overlength, and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a special permit fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

(3) When used to transport agricultural products, a truck authorized to be used under a custom combiner's special permit may be operated only within a 50-mile radius from the harvested field to the point of first unloading. The truck may not haul agricultural products from one commercial elevator to another commercial elevator. The truck may be operated on any highway, except a highway that is part of the federal-aid interstate system, without incurring excess weight penalties under 61-10-145 if the total gross weight of the truck does not exceed allowable weight limitations by more than 20% per axle and the maximum load per inch of tire width does not exceed 670 pounds. The truck may not be operated in excess of 40 miles per hour. No trip permit is required. If the truck exceeds the tolerance provided under this subsection, the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(4) A combine trailer authorized to be used under subsections (1)(b) or (2)(b) may be operated under the same limitations and until July 1, 1991, may be operated within the same tolerances granted trucks under subsection (3), except that the 50-mile limitation does not apply and the combine trailer may be used upon any highway of the state, including a highway that is part of the federal-aid interstate system. If the combine trailer exceeds the tolerance provided under subsection (3), the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.

(5) The fee required by this section must be collected by the department of transportation. Upon payment of the fee, the department of transportation must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in his business of custom combining in the state, which device is valid for the calendar year in which the fee is collected.

(6) All fees collected under this section must be distributed not later than January 31 immediately following the period of license as follows: 62 ½% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½% to the state special revenue fund for the department of transportation.

(7) The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

(8) The department of transportation may adopt rules, as provided in Title 2, chapter 4, to implement the provisions of this section.

History: En. 84-6015 by Sec. 1, Ch. 371, L. 1974; amd. Sec. 1, Ch. 50, L. 1975; R.C.M. 1947, 84-6015; amd. Sec. 1, Ch. 206, L. 1979; amd. Sec. 19, Ch. 581, L. 1979; amd. Sec. 2, Ch. 48, L. 1983; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 20, L. 1985; amd. Sec. 1, Ch. 183, L. 1989; Sec. 15-24-1001, MCA 1987; redes. 61-10-130 by Sec. 3, Ch. 183, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-10-131 through 61-10-140 reserved.

61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds. (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-110, except recreational vehicles as defined in 61-1-132, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W. and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the gross vehicle weight functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of such vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203; and

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained.

History: En. Sec. 5, Ch. 171, L. 1931; re-en. Sec. 1751.5, R.C.M. 1935; amd. Sec. 4, Ch. 184, L. 1939; amd. Sec. 4, Ch. 243, L. 1961; amd. Sec. 1, Ch. 321, L. 1971; amd. Sec. 26, Ch. 316, L. 1974; amd. Sec. 3, Ch. 280, L. 1977; R.C.M. 1947, 32-1126(1) thru (4); amd. Sec. 2, Ch. 226, L. 1981; amd. Sec. 3, Ch. 686, L. 1985; amd. Sec. 121, Ch. 370, L. 1987; amd. Sec. 2, Ch. 57, L. 1989; amd. Sec. 1, Ch. 446, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Termination Provision Repealed: Section 1, Ch. 149, L. 1991, repealed sec. 5, Ch. 446, L. 1989, which terminated the 1989 amendments to this section July 1, 1991. Repealer effective March 25, 1991.

Cross-References

Public scales, Title 7, ch. 21, part 31.

Highway Patrol — jurisdiction of patrol officers, Title 44, ch. 1, part 10.

"Peace officer" defined, 45-2-101.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-10-142. Display of permit. A special permit issued under 61-10-121 shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the highway patrol, or employee of the department of transportation.

History: En. 32-1127.8 by Sec. 34, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.8; amd. Sec. 122, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Jurisdiction of Highway Patrol, Title 44, ch. 1, part 10.

"Peace officer" defined, 45-2-101.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-10-143. Confiscation — action by commission. A peace officer, officer of the highway patrol, or employee of the department of transportation who finds a person operating a vehicle, combination of vehicles, load, object, or other thing in violation of the conditions of a special permit may confiscate the permit and forward it to the commission. The commission may return it to the permittee or revoke, cancel, or suspend it without refund. The commission shall keep a record of all action taken upon confiscated permits, and if a permit is returned to the permittee, the action taken by the commission shall be endorsed on it. A permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after the hearing, may reinstate the permit or revise its previous action.

History: En. 32-1127.9 by Sec. 35, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.9; amd. Sec. 123, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway Commission, 2-15-2502; Title 60, ch. 2, part 1.

Regulation of motor carriers, Title 69, ch. 12.

61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock. In the event the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, the department may issue a single trip permit for the fee of $10 for allowing said vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, are subject to the fines provided in 61-10-145, and all loads in excess of 5% of the total gross or axle weight limitations, or 7% if the vehicle or combination of vehicles is transporting livestock, must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(4) may move over a highway, except any highway which is part of the federal-aid interstate system, within a 50-mile radius of

the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle, but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles per hour. No single trip permit as required in subsection (2) shall be applicable to such vehicle or combination of vehicles. When such vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed shall apply to that portion of the load above the legal limit.

History: En. Sec. 3(a), Ch. 123, L. 1947; amd. Sec. 2, Ch. 243, L. 1961; amd. Sec. 24, Ch. 316, L. 1974; amd. Sec. 1, Ch. 239, L. 1977; R.C.M. 1947, 32-1124; amd. Sec. 2, Ch. 392, L. 1981; amd. Sec. 4, Ch. 487, L. 1983.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

Transportation of livestock, 69-12-405.

61-10-145. Penalties. (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) $50 for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) $70 for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) $100 for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) $160 for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) $220 for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the highways of this state, the weight penalties in

subsection (1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-110 must specify the amount of the overweight that the defendant is alleged to have had upon the vehicle or combination of vehicles.

(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with such a permit. The failure to obtain the special permit is punishable under 61-10-146 and under this section as provided in 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.

(5) It is a misdemeanor, punishable as provided in 46-18-212, for a person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142.

History: En. Sec. 3(b), Ch. 123, L. 1947; amd. Sec. 3, Ch. 243, L. 1961; amd. Sec. 25, Ch. 316, L. 1974; R.C.M. 1947, 32-1125; amd. Sec. 78, Ch. 421, L. 1979; amd. Sec. 1, Ch. 100, L. 1981; amd. Sec. 1, Ch. 601, L. 1983; amd. Sec. 1, Ch. 380, L. 1985; amd. Sec. 1, Ch. 122, L. 1991.

Compiler's Comments

1991 Amendment: In (4), in second sentence after "under 61-10-146", inserted "and under this section as provided in 61-10-146"; and made minor changes in style.

Cross-References

Duties of County Treasurer, 7-6-2111.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-10-146. Special permits — misrepresentations and violations as misdemeanor. (1) A person who knowingly and willfully misrepresents the size or weight of a vehicle, combination of vehicles, load, object, or other thing in obtaining a special permit or who does not follow the requirements and conditions of the special permit or who operates a vehicle, combination of vehicles, load, object, or other thing the size or weight of which requires a special permit without first obtaining a special permit is guilty of a misdemeanor.

(2) A person, firm, or corporation convicted of:

(a) operating a vehicle or combination of vehicles with weight upon a wheel, axle, or group of axles greater than the maximum authorized by a special permit or of operating without a special permit a vehicle or combination of vehicles the weight of which requires a special permit shall, in addition to the other penalties provided by law for the offense, be punished by a fine in the amount provided in 61-10-145(1); or

(b) violating any provision of 61-10-124(6) or any restriction on the special permits issued by the department under 61-10-124(6) shall be punished by a fine of not less than $500 or more than $1,000, and all special permits issued for the operation of the combination in violation shall be confiscated. The combination must be separated into combinations of legal length before the units may proceed.

History: En. 32-1127.7 by Sec. 33, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.7; amd. Sec. 79, Ch. 421, L. 1979; (2) En. Sec. 4, Ch. 474, L. 1987; amd. Sec. 50, Ch. 16, L. 1991; amd. Sec. 2, Ch. 122, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 16 in two places in (2)(b) changed reference to subsection of 61-10-124.

Chapter 122 inserted (2)(a) establishing additional penalty for operating a vehicle or combination of vehicles without or in violation of the conditions of a special overweight permit; in two places in (2)(b) changed reference to subsection of 61-10-124; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

Misdemeanor — no penalty specified, 46-18-212.

61-10-147. Penalties for using highway when use is restricted. (1) It is a misdemeanor for a person, firm, or corporation to violate any of the provisions of 61-10-128(2).

(2) A person, firm, or corporation first convicted of a misdemeanor for a violation of any of the provisions of 61-10-128(2) shall be punished by a fine of not less than $10 or more than $50 or by imprisonment in the county or municipal jail for not less than 5 days or more than 25 days. For a second conviction within 1 year the person, firm, or corporation shall be punished by a fine of not less than $50 or more than $200 or by imprisonment in the county or municipal jail for not less than 25 days or more than 100 days or by both this fine and imprisonment. Upon a third or subsequent conviction within 1 year after the first conviction the person, firm, or corporation shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county or municipal jail for not less than 100 days or more than 6 months or by both this fine and imprisonment.

History: En. Sec. 9, Ch. 171, L. 1931; re-en. Sec. 1751.9, R.C.M. 1935; amd. Sec. 7, Ch. 184, L. 1939; amd. Sec. 38, Ch. 316, L. 1974; R.C.M. 1947, 32-1130.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

61-10-148. Disposition of fines and forfeited bonds. (1) Except as provided in 61-12-701 and subsection (2), one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state highway account in the state special revenue fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under

60-2-105 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R.C.M. 1921; re-en. Sec. 1752, R.C.M. 1935; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969; R.C.M. 1947, 32-1131; amd. Sec. 80, Ch. 421, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 601, L. 1983; amd. Sec. 2, Ch. 316, L. 1987; amd. Secs. 39, 66, Ch. 557, L. 1987.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Duties of County Treasurer, 7-6-2111.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

61-10-149 through 61-10-154 reserved.

61-10-155. Rulemaking authority. The department of transportation may adopt and enforce rules to implement this chapter.

History: En. Sec. 1, Ch. 371, L. 1989; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Part 2

Gross Vehicle Weight Licensing Requirements

Part Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

"Gross weight" defined, 61-1-502.

61-10-201. Gross weight fees on motortrucks and truck tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each truck and truck tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs.	$ 7.50
6,001 through 8,000 lbs.	12.50
8,001 through 10,000 lbs.	17.50
10,001 through 12,000 lbs.	20.00
12,001 through 14,000 lbs.	22.50
14,001 through 16,000 lbs.	27.50
16,001 through 18,000 lbs.	37.50
18,001 through 20,000 lbs.	50.00
20,001 through 22,000 lbs.	62.50
22,001 through 24,000 lbs.	93.75

24,001 through 26,000 lbs.	125.00
26,001 through 28,000 lbs.	156.25
28,001 through 30,000 lbs.	206.25
30,001 through 32,000 lbs.	262.50
32,001 through 34,000 lbs.	318.75
34,001 through 36,000 lbs.	375.00
36,001 through 38,000 lbs.	431.25
38,001 through 40,000 lbs.	487.50
40,001 through 42,000 lbs.	543.75
Over 42,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-110	62.50 per ton or fraction thereof.

History: Ap. p. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967; Sec. 32-3301, R.C.M. 1947; Ap. p. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974; Sec. 32-3303, R.C.M. 1947; R.C.M. 1947, 32-3301, 32-3303; amd. Sec. 81, Ch. 421, L. 1979.

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

61-10-202. Gross weight fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II
Trailers Other Than Housetrailers

Up to 2,500 lbs. for personal use—	Exempt
Up to 2,500 lbs. for commercial use	$ 3.75
2,501 through 6,000 lbs.	5.00
6,001 through 8,000 lbs.	15.00
8,001 through 10,000 lbs.	17.50
10,001 through 12,000 lbs.	20.00
12,001 through 14,000 lbs.	22.50
14,001 through 16,000 lbs.	27.50
16,001 through 18,000 lbs.	37.50
18,001 through 20,000 lbs.	50.00
20,001 through 22,000 lbs.	62.50
22,001 through 24,000 lbs.	93.75
24,001 through 26,000 lbs.	125.00
26,001 through 28,000 lbs.	156.25
28,001 through 30,000 lbs.	206.25
30,001 through 32,000 lbs.	262.50
32,001 through 34,000 lbs.	318.75
34,001 through 36,000 lbs.	375.00
36,001 through 38,000 lbs.	431.25
38,001 through 40,000 lbs.	487.50
40,001 through 42,000 lbs.	543.75

Over 42,000 lbs. and within the weight limits specified in 61-10-101 through 61-10-110	62.50 per ton or fraction thereof.

History: Ap. p. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967; Sec. 32-3302, R.C.M. 1947; Ap. p. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967; amd. Sec. 113, Ch. 316, L. 1974; Sec. 32-3303, R.C.M. 1947; R.C.M. 1947, 32-3302, 32-3303; amd. Sec. 82, Ch. 421, L. 1979.

Cross-References

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Housetrailer" defined, 61-1-501.

61-10-203. Alternative gross weight fees on truck trailer combinations. (1) In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in 61-10-201, for each motortruck or truck tractor, based upon the maximum combined gross loaded weight of a truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck tractor with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer, or a motortruck and trailers:

Up to 42,000 lbs	$ 571.00
42,001 to 44,000 lbs	631.00
44,001 to 46,000 lbs	691.00
46,001 to 48,000 lbs	752.00
48,001 to 50,000 lbs	812.00
50,001 to 52,000 lbs	871.00
52,001 to 54,000 lbs	931.00
54,001 to 56,000 lbs	992.00
56,001 to 58,000 lbs	1,052.00
58,001 to 60,000 lbs	1,112.00
60,001 to 62,000 lbs	1,172.00
62,001 to 64,000 lbs	1,233.00
64,001 to 66,000 lbs	1,293.00
66,001 to 68,000 lbs	1,352.00
68,001 to 70,000 lbs	1,412.00
70,001 to 72,000 lbs	1,473.00
72,001 to 74,000 lbs	1,533.00
74,001 to 76,000 lbs	1,593.00
76,001 to 78,000 lbs	1,653.00
78,001 and over	65.50 per ton or fraction thereof.

(2) Payment of the fees provided in this section exempts a semitrailer or trailer in combination with a motortruck or truck tractor so licensed from the fees provided in 61-3-701, 61-10-202, 61-10-210, and 61-10-211.

(3) The trailers or semitrailers must be currently registered in another state or county.

(4) A trailer or semitrailer entering the state in combination with a truck or truck tractor licensed under the above schedule or a trailer or semitrailer registered to a Montana-based carrier with trucks or truck tractors licensed under the above schedule may be moved in the local delivery zone within a 15-mile radius of the city or town in combination with a truck or truck tractor, licensed under 61-10-201, without payment of any additional fees on the truck or truck tractor, trailer, or semitrailer.

History: En. Sec. 7, Ch. 2, Ex. L. 1967; amd. Sec. 1, Ch. 212, L. 1971; amd. Sec. 112, Ch. 316, L. 1974; R.C.M. 1947, 32-3302.1; amd. Sec. 1, Ch. 5, L. 1985; amd. Sec. 1, Ch. 183, L. 1991.

Compiler's Comments

1991 Amendment: In (4), near beginning after "schedule", inserted "or a trailer or semitrailer registered to a Montana-based carrier with trucks or truck tractors licensed under the above schedule" and near middle, after "zone", inserted "within a 15-mile radius of the city or town". Amendment effective March 26, 1991.

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
Registration, Title 61, ch. 3, part 3.
Registration of foreign vehicles, Title 61, ch. 3, part 7.

61-10-204. Special fees — pole trailers, lowboys, and livestock. There shall be paid and collected annually a fee equal to 75% of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck tractors, trailers, and semitrailers used exclusively in hauling livestock and logs; truck tractors and lowboy trailers used exclusively in hauling equipment; and truck tractors drawing or hauling said lowboy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969; R.C.M. 1947, 32-3304.

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Pole trailer" defined, 61-1-114.

61-10-205. Special fees — haulers of ready-mix concrete — haulers of fertilizer. There shall be paid and collected annually a fee equal to 55% of the fees provided in Schedule I and Schedule II, as provided in 61-10-201 and 61-10-202, on:

(1) concrete mixer trucks, concrete mixer trailers, and concrete mixer semitrailers used exclusively for hauling ready-mix or ready-to-pour concrete and truck tractors used exclusively in hauling concrete mixer semitrailers; and

(2) fertilizer spreader trucks and spreader trailers used exclusively to transport or to apply fertilizer to agricultural fields and plots. The applicant for a special fee under this subsection shall show, when the fee is paid as provided in 61-10-222, a valid fertilizer dealer license issued by the department of agriculture as provided in 80-10-202.

History: En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969; amd. Sec. 1, Ch. 102, L. 1971; R.C.M. 1947, 32-3304.1; amd. Sec. 1, Ch. 600, L. 1987.

Cross-References

"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.

61-10-206. Special fees — certain farm vehicles. Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there shall be paid and collected annually a fee equal to 16% of the fees provided in Schedule I and Schedule II above on motortrucks, trailers, and semitrailers owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy, or of supplies or commodities to be used on the farm, orchard, or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be $6. The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967; R.C.M. 1947, 32-3306.

Cross-References

Cooperative associations, Title 35, ch. 15.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing, Title 35, ch. 17.

"Truck" defined, 61-1-107.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

61-10-207. Special fees — buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of $7 per seat, exclusive of the first seven seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in 61-10-201. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965; R.C.M. 1947, 32-3307.

Cross-References

"School bus" defined, 20-10-101, 61-1-116.

"Bus" defined, 61-1-115.

61-10-208. Special fees — housetrailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each housetrailer, based upon overall length of body as set by the licensee in his application, except as otherwise provided, a fee equal to 75 cents for each foot of overall trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967; R.C.M. 1947, 32-3305.

Cross-References

"Housetrailer" defined, 61-1-501.

Fee in lieu of tax for certain vehicles, 61-3-521.

61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee. (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for trucks, trailers, tractors, pole trailers, or semitrailers may be paid for a 1-month period for one-twelfth the regular fee or for a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the annual vehicle registration fee, an additional fee of $5 shall be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which shall state the months for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways after the expiration of:

(a) the 1-month period until the owner pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year; or

(b) the 3-month period unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever is greater, pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year.

(3) A person who operates a vehicle upon the public highways in violation of subsection (2) is guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.

(4) If within 5 days thereafter no license for a full year has been purchased as required, the Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner which is directed for these cases by the department until the requirement is met.

History: (1)En. Sec. 6-208, Ch. 197, L. 1965; amd. Sec. 114, Ch. 316, L. 1974; Sec. 32-3308, R.C.M. 1947; (2) thru (4)En. Sec. 6-209, Ch. 197, L. 1965; amd. Sec. 2, Ch. 292, L. 1967; amd. Sec. 115, Ch. 316, L. 1974; Sec. 32-3309, R.C.M. 1947; R.C.M. 1947, 32-3308, 32-3309; amd. Sec. 83, Ch. 421, L. 1979; amd. Sec. 1, Ch. 187, L. 1981; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of Sheriff, 7-32-2121.

Municipal police force, Title 7, ch. 32, part 41.

Highway Patrol — jurisdiction, Title 44, ch. 1, part 10.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Pole trailer" defined, 61-1-114.

"Gross weight" defined, 61-1-502.

61-10-210. Three unit combination — fees in lieu of gross weight fees — marking. (1) Instead of the gross weight fees provided in 61-10-201 through 61-10-209, the owner of a motortruck or truck tractor used on the highways of the state in connection with two trailers or semitrailers at the same time shall register them as a three unit combination in the following manner by:

(a) paying the registration and other fees covering the maximum practical gross vehicle weight for the truck or truck tractor, but not less than the actual operating gross weight under 61-3-303, 61-3-321, and 61-10-201;

(b) registering the trailers in accordance with 61-3-303 and 61-3-321 and paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with 61-10-202 on the combined gross weight of the two trailers or semitrailers, treating them as if they were a single unit.

(2) This section does not authorize axle loads in excess to those established by 61-10-101 through 61-10-110.

History: En. Sec. 6-210, Ch. 197, L. 1965; amd. Sec. 116, Ch. 316, L. 1974; R.C.M. 1947, 32-3310.

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Axle" defined, 61-1-128.

"Gross weight" defined, 61-1-502.

61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motortruck, truck tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck tractor, semitrailer, or trailer totals more than 6,000 pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) $10 for each trip of 200 miles or less;

(b) $15 for each trip of over 200 miles to 400 miles;

(c) $20 for each trip of over 400 miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965; R.C.M. 1947, 32-3312; amd. Sec. 7, Ch. 40, L. 1981.

Cross-References

County fairs, Title 7, ch. 21, part 34.

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

61-10-212. Temporary trip permits showing payment of fees — display. (1) Temporary trip permits showing payment of the fees provided for in 61-10-211 shall be issued under rules prescribed by the department. The permit shall be displayed in the vehicle for which the fee has been paid at all times while the vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The department may limit the operation of the vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965; amd. Sec. 117, Ch. 316, L. 1974; R.C.M. 1947, 32-3313.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-10-213. Time for payment of fees by nonresidents — disposition. A nonresident owner or operator of a motortruck, truck tractor, trailer, or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any department office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: **En. Sec. 6-214, Ch. 197, L. 1965; amd. Sec. 118, Ch. 316, L. 1974; R.C.M. 1947, 32-3314.**

Cross-References

Residence — rules for determining, 1-1-215.

Duties of County Treasurer, 7-6-2111.

Ports of entry, checking stations, and interstate cooperation, Title 60, ch. 2, part 3.

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a licensed dealer's or wholesaler's plate as provided in 61-4-103 are exempt from this part when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business, for a period not to exceed 7 days. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(o), and (1)(q) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption.

History: **En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967; amd. Sec. 1, Ch. 46, L. 1973; Sec. 53-626, R.C.M. 1947; amd. and redes. 32-3319 by Sec. 183, Ch. 316, L. 1974; R.C.M. 1947, 32-3319(part); amd. Sec. 84, Ch. 421, L. 1979; amd. Sec. 3, Ch. 39, L. 1981; amd. Sec. 1, Ch. 311, L. 1991; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.**

Compiler's Comments

1991 Amendments — Code Commissioner Instruction: Chapter 311 inserted (4) exempting vehicles exempt from property tax and allowing Department to require documentation.

The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Name Change: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Residence — rules for determining, 1-1-215.

Municipal bus services, Title 7, ch. 14, part 44.

Foreign vehicles used in gainful occupation to be registered — reciprocity, 61-3-701.

Assignment of dealer plates, 61-4-103.

Carriers of passengers, Title 69, ch. 11, part 2.

61-10-215. Additional tax by municipalities prohibited — exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law.

However, no carrier shall be exempt hereby from paying a parking, curb, or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965; R.C.M. 1947, 32-3206.

Cross-References

Municipal taxation, Title 7, ch. 6, part 44.

Licensing and regulating of vehicles engaged in transporting persons and property, 7-21-4205.

61-10-216 through 61-10-220 reserved.

61-10-221. Purpose of fees. The fees provided in this part are in consideration of the right to use the highways of the state of Montana.

History: En. Sec. 13, Ch. 219, L. 1951; Sec. 53-627, R.C.M. 1947; amd. and redes. 32-3320 by Sec. 184, Ch. 316, L. 1974; R.C.M. 1947, 32-3320(part).

Cross-References

Highways — legislative policy and intent, 60-1-102.

Agreements concerning analysis of effects of weight on highways, 60-2-207.

61-10-222. Time for payment of fees. (1) Prior to or at the time of registration of the vehicle as required under chapter 3 or chapter 4 or prior to the operation of the vehicle on the public highways, fees provided in this part shall be paid in the full amount unless otherwise provided by law. With respect to vehicles operating on the highways with a current rear windshield sticker issued under the provisions of 61-4-111 or 61-4-112, the fees provided in this part shall be due and payable at the time of registration.

(2) A person who makes application for a GVW license after July 1 of any year shall pay one-half of the fees provided in this part.

(3) When a person makes application for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part shall be computed for the registration period at one-twelfth of the applicable fee for each month or part of month in the registration period.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967; amd. Sec. 1, Ch. 47, L. 1973; amd. Sec. 109, Ch. 316, L. 1974; amd. Sec. 14, Ch. 74, L. 1975; R.C.M. 1947, 32-3201; amd. Sec. 85, Ch. 421, L. 1979.

Cross-References

Registration — time for making application, 61-3-311.

Registration fees of vehicles, 61-3-321.

61-10-223. Expiration date. Any GVW license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965; R.C.M. 1947, 32-3202; amd. Sec. 86, Ch. 421, L. 1979.

61-10-224. GVW license transferable. The GVW license issued hereunder is transferable by the licensee of a truck, truck tractor, trailer, semitrailer, lowboy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. This gross vehicle weight license transfer may take place without the licensee transferring ownership of the first vehicle. If the transfer is to a smaller vehicle, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969; R.C.M. 1947, 32-3203; amd. Sec. 2, Ch. 415, L. 1979; amd. Sec. 87, Ch. 421, L. 1979.

Cross-References

"Truck" defined, 61-1-107.

"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.

"Semitrailer" defined, 61-1-112.

"Pole trailer" defined, 61-1-114.

"Housetrailer" defined, 61-1-501.

Withdrawal of fleet vehicles — procedure, credits, and accounting, 61-3-725.

61-10-225. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in 61-10-222, each county treasurer shall retain 5% of the fees collected by him for the cost of administration and for deposit in the general fund of the county. The remaining 95% shall be remitted monthly to the state treasurer for deposit to the credit of the department of transportation. The remittance shall be made on forms furnished to the county treasurer by the department.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967; amd. Sec. 110, Ch. 316, L. 1974; R.C.M. 1947, 32-3204; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.

Duties of County Treasurer, 7-6-2111.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

61-10-226. Deposit of state highway money. (1) Any reference to the state highway fund means the state highway account in the state special revenue fund.

(2) Money received for the use of the department from the receipt or transfer of GVW license fees, as provided by law, or from other state sources shall be deposited in the state special revenue fund to the credit of the department.

(3) Money received from the federal government or other agencies shall be deposited in a federal or state special revenue fund to the credit of the department.

(4) Money collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer.

(5) Money received from the counties shall be deposited in the state special revenue fund to the credit of the department.

History: En. Sec. 6-105, Ch. 197, L. 1965; amd. Sec. 111, Ch. 316, L. 1974; R.C.M. 1947, 32-3205; amd. Sec. 88, Ch. 421, L. 1979; amd. Sec. 1, Ch. 48, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 6, Ch. 700, L. 1989.

Cross-References

Highway revenue non-diversion, Art. VIII, sec. 6, Mont. Const.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

Distribution and apportionment of highway funds, Title 60, ch. 3.

61-10-227. Blank forms furnished county treasurers. The department shall furnish all county treasurers with the following:

(1) blank application forms and affidavit forms outlining and providing for the information needed in each classification of license required;

(2) GVW licenses in a form determined most suitable by the department;

(3) the other forms, stickers, certificates, or blanks the department considers necessary to carry out this part.

History: **En. Sec. 6, Ch. 219, L. 1951; Sec. 53-620, R.C.M. 1947; amd. and redes. 32-3205.1 by Sec. 181, Ch. 316, L. 1974; R.C.M. 1947, 32-3205.1; amd. Sec. 89, Ch. 421, L. 1979.**

Cross-References

Duties of County Treasurer, 7-6-2111.

61-10-228 through 61-10-230 reserved.

61-10-231. Enforcement. The highway patrol and any designated employee of the department of transportation shall enforce this part and 61-3-502(1), and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part and 61-3-502(1) to ascertain whether or not those laws are being complied with.

History: **En. Sec. 10, Ch. 219, L. 1951; amd. Sec. 1, Ch. 156, L. 1955; Sec. 53-624, R.C.M. 1947; amd. and redes. 32-3318 by Sec. 182, Ch. 316, L. 1974; R.C.M. 1947, 32-3318; amd. Sec. 4, Ch. 39, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.**

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Jurisdiction of Highway Patrol, Title 44, ch. 1, part 10.

Enforcement by Department of Transportation personnel, Title 61, ch. 12, part 2.

61-10-232. Violation — penalty. Any owner or operator of a motortruck, truck tractor, trailer, semitrailer, bus, or automobile who violates any provision of this part is guilty of a misdemeanor and shall be punished by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail or both.

History: **En. Sec. 6-216, Ch. 197, L. 1965; R.C.M. 1947, 32-3316.**

Cross-References

Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.
"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Bus" defined, 61-1-115.

61-10-233. Excess weight — penalties. (1) The operator is subject to the penalties stated in 61-10-232 whenever the gross loaded weight of any trucks, truck tractor, trailer, or semitrailer operated upon any highway in this state exceeds the gross vehicle weight shown on:

(a) the owner's certificate of registration and payment receipt issued under 61-3-322; or

(b) the gross vehicle weight receipt issued under 61-10-227.

(2) In addition, the operator shall immediately pay to the nearest county treasurer or to the department the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

History: **En. Sec. 6-217, Ch. 197, L. 1965; amd. Sec. 1, Ch. 37, L. 1971; amd. Sec. 120, Ch. 316, L. 1974; R.C.M. 1947, 32-3317; amd. Sec. 90, Ch. 421, L. 1979; amd. Sec. 37, Ch. 614, L. 1981.**

Cross-References

Duties of County Treasurer, 7-6-2111.
"Truck" defined, 61-1-107.
"Truck tractor" defined, 61-1-108.

"Trailer" defined, 61-1-111.
"Semitrailer" defined, 61-1-112.
"Axle" defined, 61-1-128.
"Gross weight" defined, 61-1-502.

Parts 3 through 10 reserved

Part 11

Multistate Highway Transportation Agreement

Part Cross-References

Interstate cooperative agreements for collection of taxes and fees, 60-2-311.

61-10-1101. Multistate Highway Transportation Agreement — enactment and text. The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

Article I. Findings and Purposes

Section 1. Findings. The participating jurisdictions find that:

(a) the expanding regional economy depends on expanding transportation capacity;

(b) highway transportation is the major mode for movement of people and goods in the western states;

(c) uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

(d) a number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive;

(e) the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and

(f) the participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes. The purposes of this agreement are to:

(a) adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) secure uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) provide means for the encouragement and utilization of research that will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

Article II. Definitions

Section 1. As used in this agreement:

(a) "designated representative" means a legislator or other person authorized to represent the jurisdiction;

(b) "jurisdiction" means a state of the United States or the District of Columbia;

(c) "vehicle" means any vehicle as defined by statute to be subject to size and weight standards that operates in two or more participating jurisdictions.

Article III. General Provisions

Section 1. Qualifications for membership. Participation in this agreement is open to jurisdictions that subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. Cooperation. The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. Effect of headings. Article and section headings contained herein may not be considered to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. Vehicle laws and regulations. This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

Section 5. Interpretation. The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. Amendment. This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. Restrictions, conditions, or limitations. Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

Section 8. Additional jurisdictions. Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

Article IV. Cooperating Committee

Section 1. Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions shall constitute a committee that shall have the power to:

(a) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules that would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

Section 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the total number of votes cast by participating jurisdictions are in favor thereof.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it considers appropriate or desirable. Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials.

Article V. Objectives of the Participating Jurisdictions

Section 1. Objectives. The participating jurisdictions hereby declare that:

(a) it is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

where

W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds;
L = distance in feet between the extremes of any group of two or more consecutive axles;
N = number of axles in group under consideration;

(b) it is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to;

(c) the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected;

(d) it is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including but not limited to the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent;

(e) in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and specifically of the vehicle size and weight standards set forth in subsection (a) of this section;

(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards.

Article VI. Entry Into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, Article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by canceling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

Article VII. Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

Article VIII. Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

Article IX. Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

Article X. State Government Departments Authorized to Cooperate With Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, subsections 1(a) and 1(b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee.

History: En. Sec. 1, Ch. 224, L. 1981; amd. Sec. 2, Ch. 235, L. 1989.

Cross-References

Highway code, Title 60, ch. 1.

Department of Transportation — general powers and duties, Title 60, ch. 2, part 2.

Assent to federal law, 60-3-101.

CHAPTER 11

RECORDS AND REPORTS OF CONVICTIONS

Part 1 — General Provisions

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.
61-11-102. Records to be kept by the department.
61-11-103. Violation of conservation speed limit — no record permitted.
61-11-104. Justices of the peace — availability of records.
61-11-105. Release of information — fees.

Part 2 — Habitual Traffic Offenders

61-11-201. Purpose.
61-11-202. Legislative intent.
61-11-203. Definitions.
61-11-204. Department's duties.
61-11-205. County attorney to file verified complaint.
61-11-206. Notification of attorney general — his duties.
61-11-207. Abstracts admissible as evidence.
61-11-208. Court to issue show cause order.
61-11-209. Service of process.
61-11-210. Court hearing.
61-11-211. Department to revoke license of habitual offender — method of removal of points upon revocation.
61-11-212. Penalties.
61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.
61-11-214. Repealed.
61-11-215. Construction.

Chapter Cross-References

Traffic regulation — enforcement — penalties, Title 61, ch. 8, part 7.

Part 1

General Provisions

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) Whenever any person is convicted of any offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which such conviction is had shall require the surrender to it of all driver's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward the license to the department and at the same time forward a record of such conviction to the department, providing that if such person does not possess a driver's license the court shall so indicate in its report to the department.

(2) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways shall forward, within 5 days, to the department a record of the conviction or forfeiture of bail, not vacated, of any person in the court for a violation of any such laws, other than regulations governing standing or parking, and may recommend the suspension of the driver's license of the person so convicted. The court may also recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that he attend and complete an alcohol information course as provided in 61-8-714 and 61-8-722. The department shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions set forth thereon and may not operate a vehicle in violation of those restrictions.

(3) Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report any such action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

History: (1), (2)En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; (3)En. Sec. 5, Ch. 154, L. 1963; Sec. 31-167, R.C.M. 1947; R.C.M. 1947, 31-145(a), (b), 31-167; amd. Sec. 1, Ch. 74, L. 1985; amd. Sec. 2, Ch. 444, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 36, Ch. 443, L. 1987; amd. Sec. 11, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: In (2), in second sentence after "restricted probationary license", deleted "in lieu of the suspension required in 61-5-208(2)", after "individual" inserted "comply with the requirement that he", after "attend" inserted "and complete" and deleted "a driver improvement school or", and after "an alcohol" substituted "information course as provided in 61-8-714 and 61-8-722" for "treatment program if one is available".

Cross-References

Effect of conviction — civil disabilities, 46-18-801.

Treatment of alcoholics and intoxicated persons, Title 53, ch. 24, part 3.

"Standing" and "parking" defined, 61-1-407.

"Suspension" defined, 61-1-503.

"Revocation" defined, 61-1-504.

Driver improvement program, Title 61, ch. 2, part 3.

Restricted licenses, 61-5-113.

Surrender and return of license, 61-5-209.

"Conviction" defined, 61-5-213.

Penalty for misdemeanor, 61-5-307.

Uniformity of interpretation, 61-5-308.

61-11-102. Records to be kept by the department. (1) The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each thereof note the reasons for such denial;

(b) all applications granted; and

(c) the name of every licensee whose license has been suspended or revoked by the department and after each such name note the reasons for such action.

(2) The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state and in

connection therewith maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and certain traffic accidents in which he has been involved shall be readily ascertainable and available for the consideration of the department upon any application for renewal of license and at other suitable times. No record of involvement in a traffic accident may be entered on a licensee's record unless he was convicted, as defined in 61-11-203, for an act causally related to the accident.

(3) The department is further authorized, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. Such a photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section.

(5) The department may place on a computer storage device the information contained on original records or reproductions of original records made pursuant to this section. Signatures on records need not be placed on a computer storage device.

(6) A reproduction of the information placed on a computer storage device is an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies when the following certification by a custodian of the record appears on each page:

The individual named below, being a duly designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(6), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed: ....
(Print Full Name)

History: En. Secs. 25, 27, Ch. 267, L. 1947; R.C.M. 1947, 31-141, 31-143(b); amd. Sec. 1, Ch. 503, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 76, L. 1987.

Cross-References

Admissibility of duplicates, copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Duties of Department of Justice — records, 61-3-101.

Application for driver's license, 61-5-107.

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

Uniformity of interpretation, 61-5-308.

Driver License Compact, Title 61, ch. 5, part 4.

Uniform Accident Reporting Act, Title 61, ch. 7, part 1.

61-11-103. Violation of conservation speed limit — no record permitted. No violation of 61-8-304 shall be recorded or charged against the driver's record of a person convicted of violating 61-8-304, and no insurance company shall hold a violation of 61-8-304 against the insured, and there shall be no increase in premiums due to a violation of 61-8-304.

History: En. 32-2144.6 by Sec. 6, Ch. 60, L. 1974; amd. Sec. 1, Ch. 248, L. 1974; amd. Sec. 1, Ch. 6, L. 1975; R.C.M. 1947, 32-2144.6(2).

Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-11-104. Justices of the peace — availability of records. Justices of the peace shall make available to the department records of cases which involve the state highway patrol as the department may request.

History: En. Sec. 16, Ch. 199, L. 1943; R.C.M. 1947, 31-116; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 40, Ch. 557, L. 1987.

Cross-References

Records in Justices' Courts, Title 3, ch. 10, part 5.

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Duties of County Treasurer, 7-6-2111.

Jurisdiction of Highway Patrol, Title 44, ch. 1, part 10.

61-11-105. Release of information — fees. (1) Except as provided in subsection (2), the department shall, upon request and with the licensee's approval, furnish a person the individual driving record of a licensee showing the following:

(a) licensee identification data;

(b) driver's license status and expiration date;

(c) convictions of the licensee; and

(d) traffic accidents in which the licensee was involved.

(2) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena. The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d).

(3) A fee of $3 must be paid for each record requested. A fee of $10 must be paid if a certified record, as provided in 61-11-102(6), is requested. Individual driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency.

History: En. Sec. 2, Ch. 503, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 467, L. 1989; amd. Sec. 1, Ch. 525, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) inserted exception clause and after "request" inserted "and with the licensee's approval"; in (1)(a), after "data", deleted "and address"; inserted last sentence in (2) requiring Department to furnish driving record to agency or individual determined to have legitimate purpose; and made minor changes in style.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Powers of judges at chambers, 3-5-311.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Part 2

Habitual Traffic Offenders

61-11-201. Purpose. This part is predicated upon the belief and philosophy that innocent drivers and other innocent passengers and pedestrians have a constitutional right to live, free from fear of death or injury from habitual traffic offenders. Further, it is the purpose of this part to reduce the number of motor vehicle accidents in this state and to provide greater safety to the motoring public and others by denying to the habitual traffic offenders the privilege of operating a motor vehicle upon the public streets and highways of this state.

History: En. 31-175 by Sec 1, Ch. 362, L. 1974; R.C.M. 1947, 31-175.

Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Traffic safety program, Title 61, ch. 2, part 1.

61-11-202. Legislative intent. It is the legislative intent of this part to:

(1) establish criteria and procedures by which persons who have demonstrated their apparent indifference for the safety and welfare of others and their disrespect for the laws of this state and its political subdivisions and their disregard for the orders of its courts and administrative agencies may be adjudged habitual traffic offenders; and

(2) impose increased deprivation of the privilege to operate a motor vehicle upon these persons.

History: En. 31-176 by Sec. 2, Ch. 362, L. 1974; R.C.M. 1947, 31-176.

Cross-References

Revocation, suspension, or cancellation of licenses, Title 61, ch. 5, part 2.

61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, 2 points.

(3) There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

History: En. 31-177 by Sec. 3, Ch. 362, L. 1974; amd. Sec. 48, Ch. 359, L. 1977; R.C.M. 1947, 31-177(1), (2), (5); amd. Sec. 1, Ch. 519, L. 1979; amd. Sec. 12, Ch. 698, L. 1983; amd. Sec. 124, Ch. 370, L. 1987; amd. Sec. 2, Ch. 335, L. 1989.

Cross-References

"Felony" defined, 45-2-101.

Homicide, Title 45, ch. 5, part 1.

Conditions of bail — violation thereof, Title 46, ch. 9, part 5.

Effect of conviction — civil disabilities, 46-18-801.

Driver licensing provisions, Title 61, ch. 5, part 1.

Suspension, revocation, and cancellation of license, Title 61, ch. 5, part 2.

Accident reporting — penalty for violation, 61-7-118.

Reckless driving, 61-8-301.

Speed restrictions — basic rule, 61-8-303.

Permission of authorities to hold speed contest, 61-8-308.

Operation of a vehicle by a person with alcohol concentration of 0.10 or more, 61-8-406.

Multiple convictions prohibited, 61-8-408.

Penalty for driving with excessive blood alcohol concentration, 61-8-722.

61-11-204. Department's duties. Whenever it appears from the records maintained in the department that a person's driving record brings him within the definition of an habitual traffic offender, as defined in 61-11-203(2), the department shall forthwith certify two copies of that person's driving record and two copies of all relevant abstracts of conviction. One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle but is licensed in another state, the department may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark.

History: En. 31-178 by Sec. 4, Ch. 362, L. 1974; R.C.M. 1947, 31-178; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

General duties of Attorney General, 2-15-501.

County Attorney — records and reports, 7-4-2715.

Driver License Compact, Title 61, ch. 5, part 4.

61-11-205. County attorney to file verified complaint. Immediately upon receiving the certified documents from the department, the county attorney shall, in the name of the state on the relation of the department, file a verified complaint with the district court for a civil proceeding against the person named in the certified document and such documents shall be a part of the verified complaint.

History: En. 31-179 by Sec. 5, Ch. 362, L. 1974; R.C.M. 1947, 31-179; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

County Attorney — duties related to state matters, 7-4-2716.

61-11-206. Notification of attorney general — his duties. Immediately upon the filing of the verified complaint under 61-11-205, the county attorney shall notify the attorney general that the verified complaint has been filed. If the county attorney fails to file the verified complaint within a reasonable time, the attorney general may order the county attorney to file the verified complaint, or in the alternative, the attorney general may file the verified complaint under 61-11-205 in the proper county as above set forth.

History: En. 31-180 by Sec. 6, Ch. 362, L. 1974; R.C.M. 1947, 31-180.

Cross-References

General duties of Attorney General, 2-15-501.

61-11-207. Abstracts admissible as evidence. Official abstracts of the records of convictions and bond forfeitures in the custody of the department, certified in writing by the department to be a correct account of the said convictions and bond forfeitures, may be admitted in evidence in any judicial proceeding under this part upon establishing the proper foundation.

History: En. 31-181 by Sec. 7, Ch. 362, L. 1974; R.C.M. 1947, 31-181; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Admissibility of evidence, Rules 104 and 105, M.R.Ev. (see Title 26, ch. 10).

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

61-11-208. Court to issue show cause order. The court in which the verified complaint is filed shall advance the proceeding upon the docket and shall enter an order, which incorporates the verified complaint, to show cause why the person named therein should not be adjudged an habitual traffic offender.

History: **En. 31-182 by Sec. 8, Ch. 362, L. 1974; R.C.M. 1947, 31-182.**

Cross-References

Powers of judges at chambers, 3-5-311.

Pleadings, Rule 7(a), M.R.Civ.P. (see Title 25, ch. 20).

61-11-209. Service of process. Service of process shall be made in the same manner as is allowed in any other civil action in this state.

History: **En. 31-183 by Sec. 9, Ch. 362, L. 1974; R.C.M. 1947, 31-183.**

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

61-11-210. Court hearing. At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that the defendant is not the person named in the verified complaint or that he is not an habitual traffic offender as defined in 61-11-203(2), the proceedings shall be dismissed. If the court finds that the defendant is the same person named in the verified complaint and that the defendant is an habitual traffic offender as defined in 61-11-203(2), the court shall so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state. Upon a finding adverse to the defendant, the clerk of the court wherein the hearing is held shall file with the department a copy of the court's order together with the defendant's license. If the proceeding is dismissed, the clerk of the court wherein the hearing is held shall file with the department a copy of the court's order dismissing the proceeding, which order shall state the grounds upon which the dismissal was based, and shall specify the court findings on the conviction points which have been accrued by the defendant.

History: **En. 31-184 by Sec. 10, Ch. 362, L. 1974; R.C.M. 1947, 31-184; amd. Sec. 1, Ch. 503, L. 1985.**

Cross-References

Powers of judges at chambers, 3-5-311.

General duties of Clerk of District Court, 3-5-501.

Preliminary hearings, Rule 12(d), M.R.Civ.P. (see Title 25, ch. 20).

Surrender and return of license, 61-5-209.

61-11-211. Department to revoke license of habitual offender — method of removal of points upon revocation. Upon receipt of a court order declaring an individual a habitual offender, the department shall revoke the driver's license or driving privilege of the individual named in the order for a period of 3 years from the date of the order, subject to the provisions of 61-2-302. Additionally, the department shall remove from that individual's record those habitual offender points that were certified to the county attorney in the certification required by 61-11-204.

History: **En. 31-184.1 by Sec. 1, Ch. 176, L. 1975; R.C.M. 1947, 31-184.1; amd. Sec. 91, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 390, L. 1991.**

Compiler's Comments

1991 Amendment: At end of first sentence inserted "subject to the provisions of 61-2-302"; and made minor changes in style.

Cross-References

Powers of judges at chambers, 3-5-311.

Mandatory revocation of license upon proper authority, 61-5-205.

Period of suspension or revocation, 61-5-208.

61-11-212. Penalties. A person who has been adjudged a habitual traffic offender may not be issued a license to operate a motor vehicle in this state until:

(1) a period of 3 years has elapsed from the date of the final order of the court adjudging the person a habitual traffic offender, subject to the provisions of 61-2-302;

(2) the person has met the requirements of all applicable laws and rules relating to the licensing of motor vehicle operators in this state; and

(3) the person files with the department, and maintains for a period of 3 years, proof of his financial responsibility in the limits required by law.

History: En. 31-185 by Sec. 11, Ch. 362, L. 1974; R.C.M. 1947, 31-185; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 390, L. 1991.

Compiler's Comments

1991 Amendment: At end of (1) inserted "subject to the provisions of 61-2-302"; and made minor changes in style.

Cross-References

Driver licensing provisions, Title 61, ch. 5, part 1.

Period of suspension or revocation, 61-5-208.

When proof of financial responsibility required, 61-6-131.

61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor. A person found to be a habitual traffic offender under this part and who operates a motor vehicle in this state while the order of the court prohibiting the operation remains in effect is guilty of a misdemeanor and upon conviction shall be imprisoned for a period of not more than 1 year or fined not more than $1,000, or both, and the department, upon receiving a record of the conviction of a person under this section, shall extend the period of revocation for an additional 1 year. However, in cases in which the prohibited operation of a motor vehicle by a habitual traffic offender is necessitated in a situation of extreme emergency in order to save life, limb, or property, he may not be considered guilty of a violation under this part.

History: En. 31-187 by Sec. 13, Ch. 362, L. 1974; R.C.M. 1947, 31-187; amd. Sec. 3, Ch. 390, L. 1991.

Compiler's Comments

1991 Amendment: At end of first sentence inserted requirement that Department extend revocation period for an additional 1 year; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Driving while license suspended or revoked — penalty, 61-5-212.

61-11-214. Repealed. Sec. 4, Ch. 390, L. 1991.

History: En. 31-188 by Sec. 14, Ch. 362, L. 1974; amd. Sec. 1, Ch. 109, L. 1975; R.C.M. 1947, 31-188.

61-11-215. Construction. Nothing contained in this part shall be construed as to repeal, modify, or amend any other laws or parts of laws, or any existing ordinance of any political subdivision relating to the operation or licensing of motor vehicles, the licensing of persons to operate motor vehicles or providing penalties for the violation thereof; nor shall anything in this part be construed so as to preclude the exercise of regulatory powers of any division, agency, department, or political subdivision of this state or of the federal government having the statutory power to regulate the operation and licensing of motor vehicles and the licensing of motor vehicle operators.

History: En. 31-189 by Sec. 15, Ch. 362, L. 1974; R.C.M. 1947, 31-189.

CHAPTER 12

MISCELLANEOUS PROVISIONS

Part 1 — Powers of Local Authorities

61-12-101. Powers of local authorities to regulate traffic.
61-12-102. Private parking services — parking citations.

Part 2 — Enforcement by Department of Transportation Personnel

61-12-201. Appointment of employees as peace officers.
61-12-202. Training of department peace officers — rules.
61-12-203. Official attire required for making arrests and carrying firearms.
61-12-204. Identification badge and uniform — safety equipment.
61-12-205. Power to inspect vehicle registration, receipts, and other documents.
61-12-206. Offenses for which arrest authorized.
61-12-207. Cooperation with other agencies.
61-12-208. Duty upon making an arrest — power to fix and accept bail.

Part 3 — Motor Club Service Companies

61-12-301. Terms defined.
61-12-302. Companies and agents to be licensed.
61-12-303. Requirements for license.
61-12-304. Deposits required.
61-12-305. Continuance of license.
61-12-306. Revocation of license.
61-12-307. Financial statement to be filed.
61-12-308. Service contract to be filed with commissioner.
61-12-309. Contracts to be in duplicate.
61-12-310. Form of contract.
61-12-311. Companies to be licensed.
61-12-312. Contract not to be misrepresented.
61-12-313. Contracts binding on company although not complying with part.
61-12-314. Applicability.
61-12-315. Penalty for violation.

Part 4 — Removal and Sale of Abandoned Vehicles

61-12-401. Taking vehicle into custody.
61-12-402. Notice to owner.

61-12-403. Reclaiming vehicle.
61-12-404. Sale of vehicle if not reclaimed.
61-12-405. Certificate of sale.
61-12-406. Issuing certificate of ownership.
61-12-407. Transmitting return of sale and balance of proceeds.
61-12-408. Penalty.

Part 5 — Identification Cards

61-12-501. Authority of department to issue identification cards.
61-12-502. Rules for identification cards.
61-12-503. Agents for issuance of identification cards.
61-12-504. Fees for identification cards.

Part 6 — Jurisdiction Over Minors
(Repealed. Sec. 5, Ch. 484, L. 1987)

Part 7 — Disposition of Fines

61-12-701. Disposition of fines and forfeitures.
61-12-702. Court costs — fees and expenses of counties.
61-12-703. Repealed.

Part 1

Powers of Local Authorities

Part Cross-References

County roads, Title 7, ch. 14, parts 21 through 26.

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

61-12-101. Powers of local authorities to regulate traffic. The provisions of chapter 8 and chapter 9 shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) regulating the standing or parking of vehicles;

(2) regulating the traffic by means of police officers or traffic-control devices;

(3) regulating or prohibiting processions or assemblages on the highways;

(4) designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) regulating the speed of vehicles in public parks;

(6) designating any highway as a through highway and requiring that all the vehicles stop before entering or crossing the same, designating any intersection as a stop intersection, and requiring all vehicles to stop at one or more entrances to such intersections;

(7) restricting the use of highways as authorized in 61-10-128(2);

(8) regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

(9) regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) altering the speed limits as authorized herein;

(11) regulating the driving of vehicles by any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the incorporated limits of any city or town;

(12) regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the incorporated limits of any city or town;

(13) regulating or prohibiting the driving of vehicles by any person in a willful or wanton disregard for the safety of persons or property within the incorporated limits of any city or town;

(14) enacting as ordinances any and all provisions of chapter 8 or chapter 9 and any and all other laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with state law or federal regulations and to enforce the same within their jurisdiction.

History: En. Sec. 28, Ch. 263, L. 1955; amd. Sec. 2, Ch. 201, L. 1957; amd. Sec. 1, Ch. 240, L. 1959; R.C.M. 1947, 32-2131.

Cross-References

Municipal trafficways and public grounds, Title 7, ch. 14, part 41.

Municipal parking, Title 7, ch. 14, part 45.

"Through highway" defined, 61-1-210.

"Intersection" defined, 61-1-212.

"Stop", "stopping", "standing", and "parking" defined, 61-1-407.

Traffic provisions uniform throughout state — power of local authorities, 61-8-103.

Local traffic-control devices, 61-8-206.

When local authorities may and shall alter speed limits, 61-8-310.

Additional parking regulations, 61-8-355.

61-12-102. Private parking services — parking citations. (1) As used in this section, the following definitions apply:

(a) "Local government" means a municipality, if the private parking service operates parking services within a municipality, or a county, if such services are not operated within a municipality.

(b) "Private parking service" means the service of providing areas for parking motor vehicles, as defined in 61-1-102, by the general public for compensation and includes such services conducted:

(i) on private property; or

(ii) on public property under contract or agreement with the local government.

(2) A local government may by ordinance allow a private parking service to impound a motor vehicle. A motor vehicle may not be impounded by attaching a device that makes the motor vehicle immobile.

(3) A private parking service may enter into an agreement with the local government to authorize employees of the private parking service to issue citations for parking violations as defined by state, municipal, or county laws, which occur within the boundaries of the private parking service's parking areas. All such citations must be considered within the jurisdiction of the local government and must be handled in the same manner as citations issued by peace officers thereof.

History: En. Sec. 1, Ch. 215, L. 1987.

Part 2

Enforcement by Department of Transportation Personnel

Part Cross-References

Duties of Department of Transportation, 60-2-202.

61-12-201. Appointment of employees as peace officers. The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the gross vehicle weight functions of the department. Each employee appointed shall be issued a certificate of appointment and execute an oath of office which shall be entered into the records of the department.

History: En. Sec. 1, Ch. 242, L. 1971; amd. Sec. 42, Ch. 316, L. 1974; R.C.M. 1947, 32-1632; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Oaths, Title 1, ch. 6, part 1.

Public records, Title 2, ch. 6.

"Peace officer" defined, 45-2-101.

Ports of entry and checking stations, Title 60, ch. 2, part 3.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Size, weight, load — enforcement, 61-10-231.

61-12-202. Training of department peace officers — rules. (1) The department shall provide such training as required to qualify those employees to competently perform their duties under this part and shall adopt such rules as are required and necessary for qualification of those employees as peace officers.

(2) An employee may not make arrests until he has successfully completed such training as required by the department.

History: En. Secs. 2, 3, Ch. 242, L. 1971; amd. Secs. 43, 44, Ch. 316, L. 1974; R.C.M. 1947, 32-1633, 32-1634.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Functions of Board of Crime Control — qualifications for peace officers, 44-4-301.

Arrest by a peace officer, Title 46, ch. 6, part 4.

61-12-203. Official attire required for making arrests and carrying firearms. Qualified employees may make arrests throughout the state only when dressed in official uniform and displaying the official badge authorized by the department. Authorized employees may not carry firearms unless officially attired.

History: En. Sec. 4, Ch. 242, L. 1971; amd. Sec. 45, Ch. 316, L. 1974; R.C.M. 1947, 32-1635.

61-12-204. Identification badge and uniform — safety equipment. (1) Employees of the department engaged in the enforcement of this part shall wear and prominently display an identification badge or device with the employee's name and title shown on the identification badge or device. The department may authorize uniform dress for department employees engaged in such enforcement.

(2) The department may issue soft body armor to an employee engaged in the enforcement of this part upon request of the employee after the employee's appointment as a peace officer.

History: En. Sec. 6, Ch. 242, L. 1971; amd. Sec. 47, Ch. 316, L. 1974; R.C.M. 1947, 32-1637; amd. Sec. 1, Ch. 333, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning issuance of soft body armor to employees appointed as peace officers.

61-12-205. Power to inspect vehicle registration, receipts, and other documents. Employees of the department appointed under 61-12-201 may when officially dressed make reasonable inspection of vehicle registration receipts, department receipts and registrations, special permits, and other documents required to be carried in or for a vehicle traveling on the public highways of Montana.

History: En. Sec. 5, Ch. 242, L. 1971; amd. Sec. 46, Ch. 316, L. 1974; R.C.M. 1947, 32-1636.

Cross-References

Registration, Title 61, ch. 3, part 3.

Standards, permits, and fees, Title 61, ch. 10, part 1.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Size, weight, load — enforcement, 61-10-231.

61-12-206. Offenses for which arrest authorized. (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;
(b) part 3, chapter 4, of this title;
(c) sections 15-24-201 through 15-24-205;
(d) sections 15-70-302 through 15-70-307;
(e) sections 15-70-311 through 15-70-314;
(f) sections 15-71-101 through 15-71-105;
(g) section 61-3-502(1);
(h) sections 61-10-201 through 61-10-215;
(i) sections 61-10-222 through 61-10-224;
(j) sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section.

History: En. Sec. 8, Ch. 242, L. 1971; amd. Sec. 49, Ch. 316, L. 1974; R.C.M. 1947, 32-1639; amd. Sec. 5, Ch. 39, L. 1981; amd. Sec. 1, Ch. 100, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(f) referencing 15-71-101 through 15-71-105.

Cross-References

Arrest, Title 46, ch. 6.

61-12-207. Cooperation with other agencies. Such employees of the department shall cooperate with other law enforcement agencies.

History: En. Sec. 9, Ch. 242, L. 1971; amd. Sec. 50, Ch. 316, L. 1974; R.C.M. 1947, 32-1640.

Cross-References

Mutual assistance — rights of assisting officers, Title 44, ch. 11, part 1.

61-12-208. Duty upon making an arrest — power to fix and accept bail. Such employees, upon making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to report to the nearest justice of the peace. The employee may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the employee accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The employee shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the employee for the amount of bail money delivered. After the filing of the complaint and appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further appearance bail bond.

History: En. Sec. 10, Ch. 242, L. 1971; amd. Sec. 51, Ch. 316, L. 1974; R.C.M. 1947, 32-1641; amd. Sec. 92, Ch. 421, L. 1979.

Cross-References

Duties of Justices of the Peace, 3-10-221.

Justices of the Peace — collection and payment of money, 3-10-222.

Procedure when patrol officer accepts bail, 44-1-1102.

Arrest by a peace officer, Title 46, ch. 6, part 4.

Bail, Title 46, ch. 9.

Part 3

Motor Club Service Companies

Part Cross-References

Motor vehicle liability insurance, Title 33, ch. 23, part 2.

61-12-301. Terms defined. The following words and phrases when used in this part shall for the purpose of this part have the meanings respectively ascribed to them in this section, except in those instances where the context of the part clearly indicates that they shall have a different meaning:

(1) "Agent" means whoever solicits the purchase of service contracts, as herein defined, or transmits for another any such contract or application therefor to or from the company, or acts or aids in any manner in the delivery or negotiation of any such contract, or of the renewal or continuance thereof.

(2) "Bail bond service" means any act or acts by a company, as herein defined, the purpose of which is to furnish or procure for any person accused

of violation of any law of this state a cash deposit, bond, or other undertaking required by law in order that the accused might enjoy his personal freedom pending trial.

(3) "Buying and selling service" means any act or acts of a company, as herein defined, whereby the holder of a service contract with any such company is aided in any way in the purchase or sale of an automobile.

(4) "Commissioner" means the commissioner of insurance of the state of Montana or his assistants or deputies or other persons authorized to act for him.

(5) "Company" means any person, firm, partnership, company, association, or corporation engaged in selling, furnishing, or procuring, either as principal or agent, for a consideration, motor club service as herein defined.

(6) "Discount service" means any act or acts by a company, as herein defined, resulting in the giving of special discounts, rebates, or reductions of price on gasoline, oil, repairs, insurance, parts, accessories, or service for motor vehicles to holders of service contracts with any such company.

(7) "Emergency road service" means any act or acts by a company, as herein defined, consisting of the adjustment, repair, or replacement of the equipment, tires, or mechanical parts of any automobile so as to permit it to be operated under its own power.

(8) "Financial service" means any act or acts by a company, as herein defined, whereby loans or other advances of money, with or without security, are made to holders of service contracts with any such company.

(9) "Legal service" means any act or acts by a company, as herein defined, consisting of the hiring, retaining, engaging, or appointing of an attorney or other person to give professional advice to or represent holders of service contracts with any such company in any court, as the result of liability incurred by the right of action accruing to the holder of a service contract as a result of the ownership, operation, use, or maintenance of a motor vehicle.

(10) "Map service" means any act or acts by a company, as herein defined, by which road maps are furnished without cost to holders of service contracts with any such company.

(11) "Motor club service" means the rendering, furnishing, or procuring of towing service, emergency road service, insurance service, bail bond service, legal service, discount service, financial service, buying and selling service, theft service, map service, and touring service, or any three or more thereof, as herein defined, to any person or persons in connection with the ownership, operation, use, or maintenance of a motor vehicle by such other person or persons in consideration of such other person or persons being or becoming a member or members of any company rendering, procuring, or furnishing the same, or being or becoming in any manner affiliated therewith, or being or becoming entitled to receive membership or other motor club service therefrom by virtue of any agreement or understanding with any such company.

(12) "Service contract" means any agreement or understanding whereby any company, as herein defined, for a consideration promises to render, furnish, or procure for any other person or persons, whether they be members of such company or otherwise, motor club service, as herein defined.

(13) "Theft service" means any act or acts by a company, as herein defined, the purpose of which is to locate, identify; or recover a motor vehicle owned or controlled by the holder of a service contract with any such company which has been or may be stolen or to detect or apprehend the person guilty of such theft.

(14) "Touring service" means any act or acts by a company, as herein defined, by which touring information is furnished without cost to holders of service contracts with any such company.

(15) "Towing service" means any act or acts by a company, as herein defined, consisting of the drafting or moving of a motor vehicle from one place to another under other than its own power.

History: En. Sec. 1, Ch. 131, L. 1931; re-en. Sec. 4211.1, R.C.M. 1935; R.C.M. 1947, 66-1101.

Cross-References

Insurance, Title 33.

Insurance Commissioner and Department — powers and duties, Title 33, ch. 1, part 3.

Theft, 45-6-301.

Bail, Title 46, ch. 9.

61-12-302. Companies and agents to be licensed. No company or any agent, as herein defined, doing business in this state shall execute, issue, or deliver any service contract to any person or persons owning or operating motor vehicles without first having obtained a license from the commissioner as provided for in this part, nor shall any such company or agent collect or receive from any person or persons in advance of the execution, issuance, or delivery of any such service contract any money or other thing of value upon any promise or agreement to execute, issue, or deliver any such service contract without first having obtained a license from said commissioner as provided for in this part.

History: En. Sec. 2, Ch. 131, L. 1931; re-en. Sec. 4211.2, R.C.M. 1935; R.C.M. 1947, 66-1102.

Cross-References

Authorization of insurers, Title 33, ch. 2, part 1.

61-12-303. Requirements for license. (1) The commissioner may not issue a license to a company until the company has filed with him the following:

(a) a formal application in such form and detail as the commissioner may require, executed under oath by its president or other principal officer;

(b) a copy of the form of its contract;

(c) a certified copy of its charter or articles of incorporation and its bylaws, if any;

(d) a financial statement in such form and detail as the commissioner may require, executed on oath by its president or other principal officer;

(e) a certificate from the commissioner that it has complied with 61-12-304 in all cases where a deposit of cash or a bond is required by this part;

(f) a certificate from the corporation commissioner of the state of Montana, in the event it be a corporation, that it has complied with the corporation laws of said state.

(2) The commissioner may not issue a license to a company until the company has paid to the commissioner $100 as an annual license fee, or the pro rata portion thereof necessary to be paid to the end of the current calendar year from the date of the application for the license.

(3) The commissioner may not issue a license to a company until the company has satisfied him by an examination and evidence the commissioner may require, in his discretion, that the company has complied with the laws of the state of Montana and that its management is trustworthy and competent.

History: En. Sec. 3, Ch. 131, L. 1931; re-en. Sec. 4211.3, R.C.M. 1935; R.C.M. 1947, 66-1103; amd. Sec. 19, Ch. 798, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(e) substituted "commissioner" for "state treasurer"; and made minor changes in style.

Cross-References

Authorization of insurers, Title 33, ch. 2, part 1.

61-12-304. Deposits required. The commissioner may not grant a license to a company until it has deposited with the commissioner the sum of $25,000 in cash or in lieu thereof a bond in a form prescribed by the commissioner payable to the state of Montana in the sum of $25,000, with surety approved by the commissioner, conditioned upon the faithful performance of its service contracts and payment of any fines or penalties levied against it for failure to comply with this part. However, when any company proves to the commissioner that it has been in continuous, active operation in the state for a period of more than the preceding 5 years and has a paid membership of more than 5,000 members within the state or that there are more than 5,000 holders of its service contracts within the state and that it is being properly managed, is rendering to its members the services promised to them, and is financially responsible, the commissioner may not require a cash deposit or bond while the company remains in that condition. The cash deposit or bond is not a penalty but is for the protection of the public only.

History: En. Sec. 4, Ch. 131, L. 1931; re-en. Sec. 4211.4, R.C.M. 1935; R.C.M. 1947, 66-1104; amd. Sec. 20, Ch. 798, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, near beginning after "company", deleted "as herein defined except as hereinafter stated" and after "deposited with the" substituted "commissioner" for "state treasurer", in middle of second sentence, before "5 years", inserted "the preceding" and after "5 years" deleted "immediately last past", and at beginning of third sentence, before "cash", deleted "foregoing" and after "not" deleted "required in any instance as"; and made minor changes in style.

Cross-References

Insurance companies — deposit requirement, 33-2-111.

61-12-305. Continuance of license. Subject to payment by January 1 of each year of the annual license fee required under 61-12-303, each license continues in force as long as the company is entitled to the license under this part or until the license is revoked, suspended, or otherwise terminated.

History: En. Sec. 5, Ch. 131, L. 1931; re-en. Sec. 4211.5, R.C.M. 1935; R.C.M. 1947, 66-1105; amd. Sec. 21, Ch. 798, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "Subject to payment by January 1 of each year of the annual license fee required under 61-12-303, each" for "Every", after "license" substituted "continues in force as long as the company is entitled to the license under this part or until the license is" for "issued hereunder shall expire annually on January 1 of each year unless sooner", and after "suspended" substituted "or otherwise terminated" for "as hereinafter provided"; and made minor changes in style.

Cross-References

Insurance companies — continuance, expiration, reinstatement, and amendment of certificate of authority, 33-2-117.

61-12-306. Revocation of license. If the commissioner shall, at any time for cause shown and after a hearing, determine that a company has violated any provision or provisions of this part or that it is insolvent or that its assets are less than its liabilities or that it or its officers refuse to submit to an examination or that it is transacting business fraudulently or that its management or business methods are improper or hazardous to the holders of its service contracts, he shall thereupon revoke or suspend its license and shall give notice thereof to the public in such manner as he may deem proper.

History: En. Sec. 6, Ch. 131, L. 1931; re-en. Sec. 4211.6, R.C.M. 1935; R.C.M. 1947, 66-1106.

Cross-References

Insurance companies — mandatory revocation or suspension of certificate of authority, 33-2-118.

61-12-307. Financial statement to be filed. Every company shall annually, on or before February 1 of each year, file with the commissioner a financial statement in such form and detail as he may prescribe, executed on oath by its president or other principal officer, showing its financial condition on December 31 of the preceding year.

History: En. Sec. 7, Ch. 131, L. 1931; re-en. Sec. 4211.7, R.C.M. 1935; R.C.M. 1947, 66-1107.

Cross-References

Insurance companies — annual statement, 33-2-701.

61-12-308. Service contract to be filed with commissioner. No service contract shall be executed, issued, or delivered in this state until a copy of the form thereof has been on file for 30 days with the commissioner, unless before the expiration of said 30 days he shall have approved the form in writing; nor shall any service contract be executed, issued, or delivered at any time in this state if the commissioner notified the company in writing within said 30 days that in his opinion the form of the contract does not comply with the laws of this state, specifying the reasons therefor.

History: En. Sec. 8, Ch. 131, L. 1931; re-en. Sec. 4211.8, R.C.M. 1935; R.C.M. 1947, 66-1108.

Cross-References

Commissioner — records and certificates, 33-1-312.

61-12-309. Contracts to be in duplicate. Every service contract executed, issued, or delivered in this state shall be made in duplicate, and shall be signed by the company issuing the same, or by its duly authorized agent, and by the party purchasing the same, and one copy thereof shall be kept by said company, and the other copy shall be delivered to the party purchasing the same.

History: En. Sec. 9, Ch. 131, L. 1931; re-en. Sec. 4211.9, R.C.M. 1935; R.C.M. 1947, 66-1109.

Cross-References

Insurance — execution of policies, 33-15-306.

61-12-310. Form of contract. No service contract shall be executed, issued, or delivered in this state unless it contains the following:

(1) the exact corporate or other name of the company;

(2) the exact location of its home office and of its usual place of business in this state, giving street number and city;

(3) a provision that the contract may be canceled at any time by either the company or the holder, and that the holder shall, if he has actually paid the consideration, thereupon be entitled to the unused portion of the consideration paid for such contract, calculated on a pro rata basis without any deductions;

(4) a provision plainly specifying the services promised and that the holder shall not be required to pay any sum for any services specified in the contract in addition to the amount specified in the contract, and further specifying the territory wherein such services are to be rendered, and the date when such service shall commence.

History: En. Sec. 10, Ch. 131, L. 1931; re-en. Sec. 4211.10, R.C.M. 1935; R.C.M. 1947, 66-1110.

Cross-References

Insurance — policy provisions, Title 33, ch. 15, part 3.

61-12-311. Companies to be licensed. No person shall solicit or aid in the solicitation of another person to purchase a service contract issued by a company not duly licensed under this part.

History: En. Sec. 11, Ch. 131, L. 1931; re-en. Sec. 4211.11, R.C.M. 1935; R.C.M. 1947, 66-1111.

Cross-References

Authorization of insurers, Title 33, ch. 2, part 1.

61-12-312. Contract not to be misrepresented. No company and no officer or agent thereof shall orally or in writing misrepresent the terms, benefits, or privileges of any service contract issued or to be issued by it.

History: En. Sec. 12, Ch. 131, L. 1931; re-en. Sec. 4211.12, R.C.M. 1935; R.C.M. 1947, 66-1112.

Cross-References

Insurance policy must contain entire contract, 33-15-302.

61-12-313. Contracts binding on company although not complying with part. Any service contract made, issued, or delivered contrary to any provision of this part shall nevertheless be valid and binding on the company.

History: En. Sec. 13, Ch. 131, L. 1931; re-en. Sec. 4211.13, R.C.M. 1935; R.C.M. 1947, 66-1113.

Cross-References

Validity of noncomplying insurance forms, 33-15-315.

61-12-314. Applicability. Nothing in this part shall apply to a duly authorized attorney at law acting in the usual course of his profession or to any insurance company, bonding company, or surety company, now or hereafter duly and regularly licensed and doing business as such under the laws of the state.

History: En. Sec. 14, Ch. 131, L. 1931; re-en. Sec. 4211.14, R.C.M. 1935; R.C.M. 1947, 66-1114.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Insurance, Title 33.

Attorneys at law, Title 37, ch. 61.

61-12-315. Penalty for violation. If any person shall violate the provisions of this part, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 131, L. 1931; re-en. Sec. 4211.15, R.C.M. 1935; R.C.M. 1947, 66-1115.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 4

Removal and Sale of Abandoned Vehicles

Part Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

61-12-401. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on any public highway, or for a period of 5 days or more on any city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(b) the sheriff of the county if the vehicle is upon the right-of-way of any county road within the county;

(c) the city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its or his personnel, equipment, and facilities for the removal and storage of the vehicle, or may hire other personnel, equipment, and facilities for those purposes.

(3) At the request of the owner or person in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2).

History: En. Sec. 2, Ch. 288, L. 1967; amd. Sec. 2, Ch. 169, L. 1969; R.C.M. 1947, 53-902; amd. Sec. 1, Ch. 445, L. 1979; amd. Sec. 6, Ch. 88, L. 1987.

Cross-References

Sheriff — duties, 7-32-2121.

Municipal police force, Title 7, ch. 32, part 41.

Highway Patrol — jurisdiction, Title 44, ch. 1, part 10.

Officers or highway patrol officers authorized to remove illegally stopped vehicles, 61-8-705.

61-12-402. Notice to owner. (1) Within 72 hours after any vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number, and license number if available, any costs incurred to that date in the removal, storage, and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff or the city police shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If such name and address are ascertained, the sheriff or the city police shall notify such owner and lienholder or person of the location of the vehicle.

(3) If the vehicle is registered in the office of the department, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid thereon, is mailed at least 30 days before the vehicle is sold as hereinafter provided.

(4) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this part. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be provided in the same manner as prescribed in 25-13-701(1)(b).

(5) If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices

required in subsections (2) through (4). The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

(6) A vehicle found by law enforcement officials to be a "junk vehicle" as defined by 75-10-501 and certified as having an appraised value of $100 or less as determined by the county assessor in accordance with the rules of the department of revenue may be directly submitted for disposal in accordance with the provisions of part 5 of chapter 10, Title 75, upon a release given by the sheriff or the city police. In the release the sheriff or the city police shall include a description of the vehicle including year, make, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section shall be transmitted to the motor vehicle wrecking facility and shall be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted without notice and without a required holding period.

History: En. Sec. 3, Ch. 288, L. 1967; amd. Sec. 1, Ch. 53, L. 1974; R.C.M. 1947, 53-903; amd. Sec. 1, Ch. 191, L. 1979; amd. Sec. 1, Ch. 355, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 88, L. 1987.

Cross-References

Notice — actual and constructive, 1-1-217.

Filing of security interests, rights, procedure, fees, 61-3-103.

Registrant as prima facie owner of vehicle, 61-3-105.

Certificates of registration, 61-3-322.

Junk vehicle disposal fee, 61-3-508.

61-12-403. Reclaiming vehicle. The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county or the city police of the city in which the vehicle was located at the time it was taken into custody satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, storage, and custody of the vehicle. He shall not be required to pay storage charges for a period longer than 90 days.

History: En. Sec. 4, Ch. 288, L. 1967; R.C.M. 1947, 53-904; amd. Sec. 2, Ch. 355, L. 1985; amd. Sec. 8, Ch. 88, L. 1987.

Cross-References

Fees of Sheriff for holding property, 7-32-2142.

Certificate of ownership, 61-3-202.

Involuntary deposit — how made, 70-6-103.

Liens — general provisions, Title 71, ch. 3, part 1.

61-12-404. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in 61-12-403 within 30 days after notification by registered or certified mail or prescribed publication, the sheriff of the county or the city police of the city in which it is located at the time it was taken into custody shall sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967; R.C.M. 1947, 53-905; amd. Sec. 3, Ch. 355, L. 1985.

Cross-References

Bailment — sale to pay costs of storage, 70-6-411.

61-12-405. Certificate of sale. (1) When any vehicle is so sold, the sheriff or the city police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate and shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle, and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967; R.C.M. 1947, 53-906; amd. Sec. 4, Ch. 355, L. 1985.

Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

61-12-406. Issuing certificate of ownership. The department shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967; R.C.M. 1947, 53-907; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Certificates of ownership, Title 61, ch. 3, part 2.

New registration required for transferred vehicle, 61-3-317.

61-12-407. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in 61-12-404 the sheriff or the city police shall transmit to the department and to the county treasurer or to the city treasurer, respectively, a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer or the city police shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, storage, and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance from:

(a) the county sheriff, the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol; or

(b) the city police, the city treasurer shall file the return in his office and deposit the balance in the city street fund on all vehicles seized by the city police.

History: En. Sec. 8, Ch. 288, L. 1967; R.C.M. 1947, 53-908; amd. Sec. 5, Ch. 355, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 9, Ch. 88, L. 1987.

Cross-References

Duties of County Treasurer, 7-6-2111.

Duties of City Treasurer relating to finances, 7-6-4104.

City and county road funds, 7-14-2512.

Fees of Sheriff for holding property, 7-32-2142.

Sale of property subject to a security interest — disposition of proceeds — security agreement, 27-18-804.

61-12-408. Penalty. Any person or persons violating the provisions of this part shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $300 or by imprisonment in the county jail for not less than 5 days or more than 90 days or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967; R.C.M. 1947, 53-909(part).

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 5

Identification Cards

61-12-501. Authority of department to issue identification cards. The department is hereby authorized to issue identification cards to any person:

(1) who is not the holder of a valid driver's license; or

(2) whose driver's license is suspended.

History: En. Sec. 1, Ch. 53, L. 1971; R.C.M. 1947, 31-170; amd. Sec. 1, Ch. 495, L. 1985; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Drivers' licenses — application of minors, 61-5-108.

Authority of department to suspend licenses, 61-5-206.

61-12-502. Rules for identification cards. The department shall formulate and adopt reasonable rules for the application for and issuing of identification cards and cancellation thereof and shall require the furnishing of such information necessary for the purpose of this part.

History: En. Sec. 2, Ch. 53, L. 1971; R.C.M. 1947, 31-171; amd. Sec. 93, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

61-12-503. Agents for issuance of identification cards. The department shall have authority to appoint county treasurers and other qualified officers to act as its agents for the issuance of such identification cards.

History: En. Sec. 4, Ch. 53, L. 1971; R.C.M. 1947, 31-173; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Office of County Treasurer, 7-4-3002.

Agency, Title 28, ch. 10.

61-12-504. Fees for identification cards. Fees not in excess of $1 for such identification cards shall be collected and credited to a state special revenue fund which shall be known as the Montana highway patrol identification card fund. Such fund shall be used by the department to defray the cost of issuing identification cards.

History: En. Sec. 5, Ch. 53, L. 1971; R.C.M. 1947, 31-174; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Fund structure, 17-2-102.

Part 6

Jurisdiction Over Minors (Repealed. Sec. 5, Ch. 484, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

61-12-601. En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963; R.C.M. 1947, 32-21-163.

61-12-602. En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963; R.C.M. 1947, 32-21-164.

61-12-603. En. Sec. 3, Ch. 215, L. 1959; R.C.M. 1947, 32-21-165.

Part 7

Disposition of Fines

61-12-701. Disposition of fines and forfeitures. Except as provided in 61-10-148(2), all fines and forfeitures collected in any court, except a justice's court, for violation of the laws and regulations relating to the use of state highways and the operation of vehicles thereon, if the apprehension or arrest was by a highway patrol officer, must be paid to the state treasurer and by him credited to the general fund of the state or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund, except for that portion of the fines otherwise allocated by law which must be paid into the appropriate accounts in the state special revenue fund.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969; R.C.M. 1947, 31-114; amd. Sec. 94, Ch. 421, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 327, L. 1985; amd. Sec. 1, Ch. 316, L. 1987; amd. Sec. 41, Ch. 557, L. 1987; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Office of County Treasurer, Title 7, ch. 6, part 21.

General fiscal duties of State Treasurer, 17-1-111.

Fund structure, 17-2-102.

Disposition of size, weight, and load fines, 61-10-148.

61-12-702. Court costs — fees and expenses of counties. The court, after deducting all costs and fees, shall immediately transmit the balance of the fine to the state or county treasurer as provided by law. The expenses of the county, except fees of officers who are paid a regular salary, are a proper claim against the state or county and claims must be paid in the manner provided by law out of the funds appropriated for such purposes.

History: En. Sec. 15, Ch. 199, L. 1943; R.C.M. 1947, 31-115; amd. Sec. 2, Ch. 327, L. 1985.

Cross-References

Claims against county, Title 7, ch. 6, part 24.

Claims against state, Title 17, ch. 8, part 2.

Court costs, Title 25, ch. 10.

61-12-703. Repealed. Sec. 5, Ch. 484, L. 1987.

History: En. 95-2229 by Sec. 11, Ch. 513, L. 1973; amd. Sec. 40, Ch. 184, L. 1977; R.C.M. 1947, 95-2229; amd. Sec. 95, Ch. 421, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 387, L. 1985.

CHAPTER 13

SEATBELTS

Part 1 — Montana Seatbelt Use Act

61-13-101. Short title.
61-13-102. Definitions.
61-13-103. Seatbelt use required — exceptions.
61-13-104. Penalty — no record permitted.
61-13-105. Education program.
61-13-106. Evidence not admissible.

Part 1

Montana Seatbelt Use Act

61-13-101. Short title. This part may be cited as the "Montana Seatbelt Use Act".

History: En. Sec. 1, Ch. 439, L. 1987.

61-13-102. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice.

(2) "Highway" means the entire width between the boundary lines of each publicly maintained way when any part thereof is open to public use for vehicular travel.

(3) "Motor vehicle" means a vehicle propelled by its own power and designed primarily to transport persons or property upon the highways of the state.

(4) "Occupants" means the driver and passengers in a motor vehicle.

(5) "Seatbelt" means a system using a lap belt, a shoulder belt, or other belt or combination of belts installed in a motor vehicle to restrain occupants, which system conforms to federal motor vehicle safety standards.

History: En. Sec. 2, Ch. 439, L. 1987.

61-13-103. Seatbelt use required — exceptions. (1) No driver may operate a motor vehicle upon a highway of the state of Montana unless each occupant of a designated seating position is wearing a properly adjusted and fastened seatbelt.

(2) The provisions of this section do not apply to:

(a) an occupant of a motor vehicle who possesses a written statement from a licensed physician that he is unable to wear a seatbelt for medical reasons;

(b) an occupant of a motor vehicle in which all seatbelts are being used by other occupants;

(c) an operator of a motorcycle as defined in 61-1-105 or a motor-driven cycle as defined in 61-1-106;

(d) an occupant of a vehicle licensed as special mobile equipment as defined in 61-1-104;

(e) children subject to the provisions of 61-9-420; or

(f) an occupant who makes frequent stops with a motor vehicle in his official job duties and who may be exempted by the department.

(3) The department may adopt rules to implement subsection (2)(f).

(4) The department or its agent may not require a driver who may be in violation of this section to stop except upon reasonable cause to believe that he has violated another traffic regulation or that his vehicle is unsafe or not equipped as required by law.

History: En. Sec. 3, Ch. 439, L. 1987.

61-13-104. Penalty — no record permitted. (1) A driver who violates 61-13-103 must be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203(2)(l). Bond for this offense is $20, and no jail sentence may be imposed.

(2) No violation of 61-13-103 may be recorded or charged against the driver's record of a person violating 61-13-103, and no insurance company shall hold a violation of 61-13-103 against the insured, and there may be no increase in premiums due to a violation of 61-13-103.

History: En. Sec. 4, Ch. 439, L. 1987.

61-13-105. Education program. The highway traffic safety division of the department shall continue its program for public information and education concerning the benefits of wearing seatbelts and include within such program the requirements of 61-13-103 and the penalty specified in 61-13-104.

History: En. Sec. 5, Ch. 439, L. 1987.

61-13-106. Evidence not admissible. Evidence of compliance or failure to comply with 61-13-103 is not admissible in any civil action for personal injury or property damage resulting from the use or operation of a motor vehicle, and failure to comply with 61-13-103 does not constitute negligence.

History: En. Sec. 6, Ch. 439, L. 1987.

TITLES 62 - 66

RESERVED

TITLE 67

AERONAUTICS

Ch.
1. General Provisions.
2. Department of Transportation — Aeronautical Powers and Duties.
3. Regulation and Licensing.
4. Noise, Height, and Land Use Regulation.
5. Airport Hazard Regulation.
6. Airport Zoning Act.
Chapters 7 through 9 reserved.
10. Municipal Airports.
11. Airport Authorities.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Definitions and Policy

67-1-101. Definitions.
67-1-102. Policy.
67-1-103. Board of aeronautics.
67-1-104. Governmental nature of aeronautical functions.
67-1-105. Penalties.

Part 2 — Uniform Principles

67-1-201. Short title.
67-1-202. State sovereignty in space.
67-1-203. Spatial ownership.
67-1-204. Lawfulness of flight and landings.
67-1-205. Penalties.
67-1-206. Interpretation.
67-1-207 through 67-1-210 reserved.
67-1-211. Alcohol concentration standards — evidence admissible — administration of tests.

Part 3 — Finance

67-1-301. Money — receipt and disbursement.
67-1-302. Industrial revenue projects.
67-1-303. Airline property tax — state airports.
67-1-304. Airport grants and loans.

Part 1

Definitions and Policy

67-1-101. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(2) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling his facilities an "air school" or anything equivalent to an "air school", and without employing or using other instructors. It does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in his duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(6) "Airman" means an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances (excepting individuals employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) and an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or

maintenance of an airport or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) "Airport and landing field" means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of Montana, any county thereof or any municipality, or any of the authorized agencies or branches thereof within the state of Montana.

(11) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority under 67-11-102.

(12) "Airport hazard" means a structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

(13) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(14) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(15) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or holding himself out as giving or offering to give that instruction. It does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

(16) "Board" means the board of aeronautics provided for in 2-15-2506.

(17) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

(18) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the area described in 67-5-201 hereof as safety zones, including any edifice, structure, or construction or object within said restricted zones erected, constructed, placed, or located on or over land or water, or both.

(19) "Civil aircraft" means an aircraft other than a public aircraft.

(20) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

(21) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(22) "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, shall be the metes and bounds and elevations along the respective sides thereof as determined by the United States government, the state of Montana, the several counties, the several municipalities, or other public authority owning, leasing, controlling, operating, or maintaining such airport or landing field, the determination and definition to be evidenced by plat showing the metes, bounds, and elevations to be filed in and among the records of said public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

(23) "Flying club" means a person other than an individual which, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

(24) "Governing body" means bodies and boards by whatever names they are known having charge of finances and management of a municipality.

(25) "Height of buildings and structures" means, for the purposes of chapter 5, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the said building or structure to the level of the highest point of the building or structure.

(26) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

(27) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(28) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(30) "Person" means an individual, firm, partnership, corporation (private, municipal, or public), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(31) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(32) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee

simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(33) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

(34) "Restricted landing area" means an area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided by the department.

(35) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(36) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(37) "Tree" means any object of natural growth.

History: Ap. p. Sec. 3, Ch. 152, L. 1945; amd. Sec. 2, Ch. 348, L. 1974; amd. Sec. 2, Ch. 213, L. 1975; Sec. 1-102, R.C.M. 1947; Ap. p. Sec. 1, Ch. 122, L. 1967; amd. Sec. 18, Ch. 348, L. 1974; Sec. 1-311, R.C.M. 1947; Ap. p. Sec. 26, Ch. 348, L. 1974; Sec. 1-322.1, R.C.M. 1947; Ap. p. Sec. 6, Ch. 12, L. 1939; Sec. 1-706, R.C.M. 1947; Ap. p. Sec. 1, Ch. 287, L. 1947; amd. Sec. 38, Ch. 348, L. 1974; Sec. 1-710, R.C.M. 1947; Ap. p. Sec. 1, Ch. 433, L. 1971; amd. Sec. 42, Ch. 348, L. 1974; Sec. 1-901, R.C.M. 1947; R.C.M. 1947, 1-102, 1-311, 1-322.1(2), (3), 1-706(a) thru (d), 1-710(2) thru (4), 1-901(2) thru (7); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: In definition of Board changed reference to 2-15-1812 to 2-15-2506, pursuant to the authority of sec. 62, Ch. 16, L. 1991, which allows the Code Commissioner to correct erroneous references; and in definition of Department changed "department of commerce provided for in Title 2, chapter 15, part 18" to "department of transportation provided for in Title 2, chapter 15, part 25". Amendment effective July 1, 1991.

Cross-References

Exemption from motor carrier laws, 69-12-102.

67-1-102. Policy. It is hereby declared that the purpose of this title is to further the public interest and aeronautical progress by:

(1) providing for the protection and promotion of safety in aeronautics;

(2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states;

(3) revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics;

(4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

(5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the

aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

History: En. Sec. 3, Ch. 152, L. 1945; R.C.M. 1947, 1-103.

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.

67-1-103. Board of aeronautics. (1) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics.

(2) Regular meetings shall be held at the board's offices at Helena, but whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it.

History: (1)En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; Sec. 1-323, R.C.M. 1947; (2)En. Sec. 6, Ch. 152, L. 1945; amd. Sec. 3, Ch. 348, L. 1974; Sec. 1-203, R.C.M. 1947; R.C.M. 1947, 1-203, 1-323(2).

Cross-References

Board of Aeronautics — qualification — allocation — quasi-judicial, 2-15-2506.

67-1-104. Governmental nature of aeronautical functions. The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions exercised for a public purpose and as a matter of public necessity; and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. Sec. 21, Ch. 152, L. 1945; amd. Sec. 37, Ch. 348, L. 1974; amd. Sec. 2, Ch. 232, L. 1977; amd. Sec. 1, Ch. 234, L. 1977; R.C.M. 1947, 1-502.

67-1-105. Penalties. Unless otherwise provided, any person violating any of the provisions of chapters 1 through 3, except 67-3-212, or any of the rules or orders issued pursuant thereto is guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment in a county jail for not more than 90 days, or both.

History: En. Sec. 22, Ch. 152, L. 1945; R.C.M. 1947, 1-503; amd. Sec. 1, Ch. 140, L. 1979.

Part 2

Uniform Principles

67-1-201. Short title. This part may be cited as the "Uniform State Law for Aeronautics".

History: En. Sec. 10, Ch. 17, L. 1929; re-en. Sec. 2736.10, R.C.M. 1935; R.C.M. 1947, 1-606.

67-1-202. State sovereignty in space. Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by the United States law.

History: En. Sec. 5, Ch. 17, L. 1929; re-en. Sec. 2736.5, R.C.M. 1935; R.C.M. 1947, 1-601.

67-1-203. Spatial ownership. The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in 67-1-204.

History: En. Sec. 6, Ch. 17, L. 1929; re-en. Sec. 2736.6, R.C.M. 1935; R.C.M. 1947, 1-602.

Cross-References

Surface owner's rights, 70-16-101.

67-1-204. Lawfulness of flight and landings. (1) Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then-existing use to which the land or water or the space over the land or water is put by the owner or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations which have been or may be promulgated by the department of transportation of the United States.

(2) Aircraft landings and takeoffs from the public waters of this state are lawful if proper safety precautions regarding public waters, as prescribed in Title 14, part 91, Code of Federal Regulations, are taken prior to such landing or takeoff, except as otherwise provided by this section.

(3) Aircraft landings and takeoffs from public roads in this state are lawful if proper safety precautions, as approved by the governing jurisdiction of such roads, are taken prior to such landing or takeoff, except as otherwise provided in this section. However, the local governing jurisdiction shall incur no liability as a result of an approval under this subsection.

(4) No person shall operate an aircraft, as pilot thereof, either in the air, on the water, or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein.

(5) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused therefrom.

(6) The landing of an aircraft on the private lands or waters of another without his consent is unlawful, except in the case of a forced landing. For

damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

(7) No person may knowingly operate, attempt to operate, or be in actual physical control of an aircraft while under the influence of alcohol or drugs. "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination thereof a person's ability to safely operate the aircraft has been diminished to the slightest degree.

(8) A person having information regarding a violation of subsection (7) shall report such information to the department.

History: En. Sec. 7, Ch. 17, L. 1929; re-en. Sec. 2736.7, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963; R.C.M. 1947, 1-603; amd. Sec. 1, Ch. 528, L. 1985; amd. Sec. 1, Ch. 542, L. 1987.

Cross-References

Forfeiture of aircraft used in drug violations, 44-12-102

Unauthorized use of airplane, 45-6-308.

Tampering with aircraft unlawful, 45-8-113.

Operation of aircraft by intoxicated persons, 53-24-106.

Harrassment of livestock unlawful, 81-7-506.

Harrassment of wildlife unlawful, 87-3-126.

Restrictions on use of aircraft or boats, 87-3-126.

67-1-205. Penalties. A person who violates any provision of this part, except 67-1-204(8), shall be guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. Sec. 8, Ch. 17, L. 1929; re-en. Sec. 2736.8, R.C.M. 1935; R.C.M. 1947, 1-604; amd. Sec. 2, Ch. 542, L. 1987.

67-1-206. Interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of aeronautics.

History: En. Sec. 9, Ch. 17, L. 1929; re-en. Sec. 2736.9, R.C.M. 1935; R.C.M. 1947, 1-605.

67-1-207 through 67-1-210 reserved.

67-1-211. Alcohol concentration standards — evidence admissible — administration of tests. (1) If a person acting or attempting to act as a crewmember of an aircraft has an alcohol concentration of 0.04% by weight or more as defined in 61-8-407, it may be inferred that the person is under the influence of alcohol and is in violation of 67-1-204.

(2) Evidence of any measured amount or detected presence of alcohol in the person at the time of the act alleged under subsection (1) and any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two at the time of the act alleged is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(3) In any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204, the court or jury may consider federal regulations governing aeronautics.

(4) A person who operates an aircraft over the lands and waters of this state is considered to have given consent to a test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his body if arrested by a peace officer for operating, attempting to operate, or being in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The test must be administered at the direction of a peace officer who has reasonable grounds to believe the person was operating, attempting to operate, or in actual physical control of an aircraft while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which of the aforesaid tests must be administered. A person who is unconscious or who is otherwise in a condition rendering him incapable of refusal is considered not to have withdrawn the consent provided by this subsection.

(5) If a person charged with violation of 67-1-204 refuses to submit to a test of his blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol in his body, none will be given, but proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed in violation of 67-1-204.

(6) The provisions relating to administration of tests provided in 61-8-405 and the definition of alcohol concentration provided in 61-8-407 apply to any testing done to determine any measured amount or detected presence of alcohol in a person and the alcohol concentration of a person charged with violation of 67-1-204.

History: En. Sec. 3, Ch. 542, L. 1987; amd. Sec. 15, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section inserted references to measured amount of detected presence of alcohol; in (1) and (6), before "alcohol", deleted "blood"; in (1), after "61-8-407", inserted "it may be inferred", after "person is" deleted "conclusively presumed to be", and after "alcohol" deleted "or drugs"; in (2) inserted reference to drugs or combination of drugs and alcohol; in (4), in two places, inserted reference to combination of drugs and alcohol; in (4) and (5), before "test", deleted "chemical"; in (4) substituted "in his body" for "or drug content of his blood"; in (5), after "purpose of determining", deleted "the alcohol content of" and substituted "body" for "blood"; and made minor changes in style.

Part 3

Finance

67-1-301. Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, shall be paid out of the following revenues:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all moneys received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All such moneys shall be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) There shall be deposited in the state special revenue fund to the credit of the department the proceeds of 1 cent per gallon out of the amount per gallon of gasoline license tax imposed by the laws of this state upon purchases of gasoline used for the operation of aircraft. Moneys so deposited shall be spent by the department for the sole purpose of carrying out its functions pertaining to aeronautics.

(5) No part of the 1 cent per gallon of gasoline license tax imposed by the laws of this state on gasoline purchased and used for the operation of airplanes or aircraft may be refunded.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963; amd. Sec. 36, Ch. 348, L. 1974; amd. Sec. 3, Ch. 213, L. 1975; R.C.M. 1947, 1-501; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 654, L. 1983; amd. Sec. 2, Ch. 676, L. 1985; amd. Sec. 1, Ch. 41, L. 1987.

Cross-References

Gasoline license tax — rate, 15-70-204.

Refund authorized, 15-70-221.

State fund structure, 17-2-102.

Distribution and use of proceeds of gasoline dealers' license tax, 60-3-201.

Airline property tax — state airports, 67-1-303.

67-1-302. Industrial revenue projects. The board of aeronautics may exercise the power and authority of a municipality under Title 90, chapter 5, part 1, with respect to projects suitable for use by commercial enterprises providing scheduled air transportation services primarily within the state if such projects are located within or based and used primarily within the state. For purposes of this section, the board of aeronautics shall be considered a municipality and a governing body thereof under Title 90, chapter 5, part 1, and shall give notice of the public hearing required by 90-5-104 in three newspapers published and circulating generally in the state and shall not issue any bonds unless it appears, after the public hearing, that the acquisition or improvements of the project is in the public interest of the state. For purposes of this section, projects suitable for commercial enterprises providing scheduled air transportation services shall include but are not limited to aircraft parts, aircraft, hangars, storage and aircraft maintenance facilities, fuel facilities, and other personal or real property suitable for use by a scheduled air transportation enterprise.

History: En. Sec. 8, Ch. 656, L. 1979.

67-1-303. Airline property tax — state airports. (1) Within 30 days of receipt, the county treasurer shall transmit to the state treasury 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The state treasurer shall place the money in the state special revenue fund to the credit of the department of transportation for the purposes provided for in 67-1-301.

History: En. Sec. 2, Ch. 238, L. 1981; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

Cross-References

Statement of assessed value transmitted to counties, 15-23-106.

67-1-304. Airport grants and loans. Any airport grant or loan that the department may be authorized to issue may be issued only after review and approval of the grant or loan request by the board.

History: En. Sec. 4, Ch. 685, L. 1983.

Cross-References

Function of Board of Aeronautics, 67-1-103.

CHAPTER 2

DEPARTMENT OF TRANSPORTATION AERONAUTICAL POWERS AND DUTIES

Part 1 — General Powers

67-2-101. Aeronautical powers and duties of department.
67-2-102. Rules, orders, and standards.
67-2-103 and 67-2-104 reserved.
67-2-105. Air search and rescue volunteers — expenses — workers' compensation coverage.

Part 2 — State Aircraft
(Repealed. Sec. 4, Ch. 23, L. 1981; Sec. 22, Ch. 274, L. 1981)

Part 3 — State Airports

67-2-301. State airports — acquisition.
67-2-302. State airports — operation.

Part 4 — Intergovernmental Cooperation

67-2-401. Cooperation — federal government.
67-2-402. Cooperation — municipalities.
67-2-403. Federal aid.

Part 5 — Enforcement

67-2-501. Enforcement.
67-2-502. Investigations and hearings.
67-2-503. Use of reports.

Part 1

General Powers

67-2-101. Aeronautical powers and duties of department. (1) The department shall supervise aeronautics within this state. It shall encourage, foster, and assist in the development of aeronautics and encourage the establishment of airports and other air navigation facilities.

(2) The department shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and shall coordinate the aeronautical activities of these bodies.

(3) The department may designate, design, and establish, expand, or modify a state airways system which will best serve the interests of the state. It may chart that airways system and arrange for publication and distribution of maps, charts, notices, and bulletins relating to the airways which may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, but the facilities must conform to federal safety standards.

(4) The department may draft and recommend necessary legislation to advance the interests of the state in aeronautics and represent the state in aeronautical matters before federal agencies and other state agencies.

(5) The department may participate as party plaintiff or defendant or as intervenor on behalf of the state or a municipality or citizen in a controversy involving any claimed encroachment by the federal government or any foreign state upon state or individual rights pertaining to aeronautics.

(6) The department may use the facilities and services of other agencies of the state when reasonably available.

(7) The department may enter into any contracts necessary to the execution of the powers granted the department by this title.

(8) The department shall grant no exclusive right for the use of an airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This subsection does not prevent the making of leases in accordance with other provisions of this title.

History: En. Sec. 7, Ch. 152, L. 1945; amd. Sec. 4, Ch. 348, L. 1974; R.C.M. 1947, 1-204.

Cross-References

Department of Livestock — authority to inspect airports and aircraft, 81-2-510.

67-2-102. Rules, orders, and standards. (1) The department may perform acts; issue and amend orders; adopt reasonable, general, or special rules; and establish minimum standards, consistent with this title, as it considers necessary to:

(a) carry out this title;

(b) perform its duties for the purpose of protecting and ensuring the general public interest and safety, the safety of persons receiving instruction concerning (or operating, using, or traveling in) aircraft, and of persons and property on land or water; and

(c) develop and promote aeronautics in this state.

(2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then-current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

History: En. 1-204.2 by Sec. 6, Ch. 348, L. 1974; R.C.M. 1947, 1-204.2.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

67-2-103 and 67-2-104 reserved.

67-2-105. Air search and rescue volunteers — expenses — workers' compensation coverage. (1) The department may temporarily employ an airman or other person who volunteers to aid in the aerial search for a missing aircraft being conducted by the department.

(2) The department and volunteer stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The department must have each volunteer covered by the Workers' Compensation Act in Title 39, chapter 71, during the course of the volunteer's assistance.

(3) Volunteers are not salaried employees and are not entitled to wages and benefits. The department may in its discretion reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for fuel, oil, food, and lodging.

History: En. Sec. 1, Ch. 336, L. 1985.

Cross-References

Air rescue volunteer as employee for workers' compensation coverage, 39-71-118, 39-71-401.

Part 2

State Aircraft
(Repealed. Sec. 4, Ch. 23, L. 1981; Sec. 22, Ch. 274, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

67-2-201. En. 1-1101 by Sec. 1, Ch. 378, L. 1974; amd. Sec. 4, Ch. 213, L. 1975; amd. Sec. 9, Ch. 232, L. 1977; R.C.M. 1947, 1-1101.

67-2-202. En. 1-1102 by Sec. 2, Ch. 378, L. 1974; amd. Sec. 5, Ch. 213, L. 1975; R.C.M. 1947, 1-1102.

67-2-203. En. 1-1103 by Sec. 3, Ch. 378, L. 1974; amd. Sec. 6, Ch. 213, L. 1975; R.C.M. 1947, 1-1103.

67-2-204. En. 1-1104 by Sec. 4, Ch. 378, L. 1974; R.C.M. 1947, 1-1104.

67-2-205. En. 1-1105 by Sec. 5, Ch. 378, L. 1974; R.C.M. 1947, 1-1105(part).

Part 3

State Airports

67-2-301. State airports — acquisition. (1) The department may, on behalf of and in the name of this state:

(a) acquire real or personal property by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state;

(c) prior to acquisition, make investigations, surveys, and plans;

(d) erect, install, construct, and maintain facilities at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or any other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other like property of the state.

(2) The department may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. The department may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, the department may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. The department may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property which it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes. The acquisition of property for any of those purposes is a public use.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(1) thru (5).

Cross-References

Airport police officers — employment and education standards, 7-32-303.

Passenger terminals — fire protection and safety regulations, 50-61-103.

Acquisition of property rights when zoning not sufficient, 67-6-301.

Acquisition of airports by counties, cities, and towns, 67-10-102.

Airport easement acquisition, 67-10-201(1).

Joint Airport Board, 67-10-205.

Eminent domain acquisition, 67-10-221.

Purchase of easements, 67-11-201(3).

67-2-302. State airports — operation. (1) The department may:

(a) lease, for a term not exceeding 10 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government or the national government, or a department of either of them, for operation;

(b) lease or assign, for a term not exceeding 10 years, space, area, improvements, or equipment on those airports to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality thereof for aeronautical purposes or purposes incidental thereto; and

(d) confer the privilege of concessions for supplying goods, commodities, things, services, and facilities upon the premises of those airports. However, in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(2) It may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state.

(3) The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property.

(4) The department may employ persons or contract with persons or firms to provide law enforcement in and around state airports whenever required by federal aviation regulations.

History: En. Sec. 19, Ch. 152, L. 1945; amd. Sec. 35, Ch. 348, L. 1974; amd. Sec. 1, Ch. 232, L. 1977; R.C.M. 1947, 1-401(6), (7); amd. Sec. 1, Ch. 192, L. 1981.

Cross-References

Airport all-beverages license, 16-4-208.

Airport all-beverages license fee, 16-4-501.

Joint Airport Board, 67-10-205.

Part 4

Intergovernmental Cooperation

67-2-401. Cooperation — federal government. (1) The department may confer with or hold joint hearings with any federal aeronautical agency in connection with any matter arising under this title or relating to the sound development of aeronautics and may avail itself of the cooperation, services, records, and facilities of federal agencies, as fully as practicable, in the administration and enforcement of this title. It shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities to the extent practicable.

(2) It shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency begins an investigation. It shall report to the appropriate federal agency all refusals by it to register federal licenses, certificates, or permits; all revocations of certificates of registration; the reasons for its action; and all penalties of which it has knowledge imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules or orders of the department.

History: En. 1-204.1 by Sec. 5, Ch. 348, L. 1974; R.C.M. 1947, 1-204.1.

67-2-402. Cooperation — municipalities. (1) The department may offer its engineering or other technical services, without charge, to a municipality desiring them in connection with the construction, maintenance, or operation or proposed construction, maintenance, or operation of an airport or restricted landing area.

(2) The department may render assistance in the acquisition, development, operation, or maintenance of airports owned, controlled, or operated by municipalities in this state out of appropriations made by the legislature for that purpose.

(3) Municipalities may cooperate with the department in the development of aeronautics and aeronautic facilities in this state.

History: En. 1-204.3 by Sec. 7, Ch. 348, L. 1974; R.C.M. 1947, 1-204.3.

67-2-403. Federal aid. (1) The department may cooperate with the government of the United States and any agency or department thereof in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities or jointly, aided by grants of aid from the United States upon terms and conditions

prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the department, either as the agent of this state or as the agent of a municipality, shall be made under the laws of this state governing the making of like contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States and any rules made under them.

(4) All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

History: En. Sec. 8, Ch. 152, L. 1945; amd. Sec. 9, Ch. 348, L. 1974; R.C.M. 1947, 1-205.

Cross-References

Federal revenues and endowments, Title 17, ch. 3.

Federal and state money, 67-10-405.

Part 5

Enforcement

67-2-501. Enforcement. The department and every state, county, and municipal officer charged with the enforcement of state or municipal laws shall enforce and assist in the enforcement of this title and of all rules adopted under it and of all other laws of this state relating to aeronautics. In the aid of that enforcement, the department possesses general police powers. The department may also, in the name of the state, enforce this title and the rules adopted under it by injunction in the courts of this state.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(1).

Cross-References

Injunctions, Title 27, ch. 19.

67-2-502. Investigations and hearings. The department may hold investigations, inquiries, and hearings concerning matters covered by this title, by its orders and rules, and concerning accidents in aeronautics within this state. An officer or employee of the department designated to hold an investigation or hearing may administer oaths and affirmations; certify official acts; issue subpoenas; and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of failure to comply with a subpoena or order issued under this title, the department may invoke the aid of a state court of general jurisdiction. The court may then order the witness to comply with the requirements of the subpoena or order or to give evidence pertaining to the matter in question. A failure to obey the order of the court may be punished as a contempt.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(2).

Cross-References

Contested cases, Title 2, ch. 4, part 6.

67-2-503. Use of reports. The reports of investigations or hearings may not be admitted in evidence or used for any purpose in any suit, action, or proceedings growing out of a matter referred to in the investigation, hearing, or report, except in case of criminal or other proceedings instituted in behalf of the department or this state under this title and other laws of this state relating to aeronautics. An officer or employee of the department may not be required to testify to any facts ascertained in or information gained by reason of his official capacity or be required to testify as an expert witness in a suit, action, or proceeding involving an aircraft. The department may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(3).

CHAPTER 3

REGULATION AND LICENSING

Part 1 — General Provisions

67-3-101. Regulation and licensing — general provisions.
67-3-102. Exceptions.
67-3-103. Licenses and certificates — exhibition.
67-3-104. Department orders.
67-3-105. Inspection powers.

Part 2 — Aircraft, Airmen, and Instructors

67-3-201. Aircraft registration and licensing required.
67-3-202. Penalty for registration violations.
67-3-203. Registration application — payment of fees — deposit of fees.
67-3-204. Fee in lieu of tax on registered aircraft — decal.
67-3-205. Aircraft registration account — source of funds — allocation.
67-3-206. Schedule of fees in lieu of tax for aircraft.
67-3-207 through 67-3-210 reserved.
67-3-211. Airman licensing.
67-3-212. Flight plan required.
67-3-213 through 67-3-220 reserved.
67-3-221. Repealed.

Part 3 — Airport Licensing
(Repealed. Sec. 1, Ch. 398, L. 1985)

Part 4 — Air Operators and Air Carriers

67-3-401. Commercial air operators — insurance.
67-3-402. Amount of insurance.
67-3-403. Evidence of insurance.
67-3-404. Continuation of insurance — notice upon cancellation.
67-3-405. Violations.
67-3-406 through 67-3-420 reserved.
67-3-421 through 67-3-429. Repealed.

Chapter Cross-References

Discrimination in license issuance prohibited, 49-3-204.

Part 1

General Provisions

67-3-101. Regulation and licensing — general provisions. In order to promote the general public interest and safety and to carry out the purposes of this title, the department may:

(1) require the annual registration of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within this state, of airmen engaged in aeronautics within this state, and of aeronautics instructors giving instruction in flying subjects and may issue certificates of registration. The certificates of registration constitute licenses of the aircraft, airmen, and instructors for operations within this state to the extent permitted by the federal licenses, certificates, or permits so registered. The department may charge a fee for the registration of each federal license, certificate, or permit not exceeding $10. It may accept as evidence of the holding of a federal license, certificate, or permit the verified application of the owner of the aircraft, the airman, or the instructor. The application shall contain information which the department may by rule or order prescribe.

(2) register aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation and license aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors giving instruction in ground subjects, in accordance with rules to be adopted by the department, and may annually renew these licenses. It may charge for the original licensing of aircraft repair shops, aircraft, aircraft parts and sales dealers, and other persons operating in aviation, air schools, and aeronautics instructors not more than $10 and for the renewal of a license not more than $10.

(3) upon notification by the federal aviation administration that it has revoked the license or certificate of an aircraft, airman, air school, or aeronautics instructor, temporarily or permanently revoke the license or certificate of registration issued for that aircraft, airman, air school, or aeronautics instructor, giving reasons for the action.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(1); amd. Sec. 2, Ch. 398, L. 1985; amd. Sec. 1, Ch. 508, L. 1985; amd. Sec. 125, Ch. 370, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Secured transactions, 30-9-103.

Aircraft sales personnel overtime compensation exclusions, 39-3-406.

Forfeiture of aircraft used in drug violations, 44-12-102.

Unauthorized use of airplane, 45-6-308.

Tampering with aircraft unlawful, 45-8-113.

Nondiscrimination in licensing, 49-3-204.

Transportation of property by motor carrier in continuous movement with air carrier — exemption from motor carrier laws, 69-12-102.

Airplane garbage disposal methods in relation to livestock, 81-2-510.

Harrassment of livestock unlawful, 81-7-506.

Harrassment of wildlife unlawful, 87-3-126.

67-3-102. Exceptions. The provisions of subsections (2) and (3) of 67-3-101 do not apply to:

(1) an aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of that licensed aircraft;

(2) an aircraft which is owned by a nonresident of this state who is lawfully entitled to operate the aircraft in the state of his residence;

(3) an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

(4) an airman operating military or public aircraft or an aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of that licensed aircraft;

(5) a person operating model aircraft or a person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of the controls and the flight is solely for instruction or for the demonstration of the aircraft to a prospective purchaser;

(6) a nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence;

(7) an airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(3).

67-3-103. Licenses and certificates — exhibition. (1) The federal license, certificate, or permit and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when he is operating within this state and must be presented for inspection upon the demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which he lands or upon the reasonable request of any other person.

(2) The federal aircraft license, certificate, or permit and the evidence of registration in this or another state, if any, required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted in the aircraft where they may readily be seen by passengers or inspectors and must be presented for inspection upon demand of a passenger, a peace officer of this state, an authorized official or employee of the department, or an official, manager, or person in charge of an airport in this state upon which it lands or upon the reasonable request of any person.

History: En. Sec. 10, Ch. 152, L. 1945; amd. Sec. 11, Ch. 348, L. 1974; R.C.M. 1947, 1-302.

67-3-104. Department orders. (1) The department shall set forth its reasons for its action and shall state the requirements to be met before approval will be given, registration permitted, license granted, or order modified or changed before it:

(a) refuses to permit the registration of a license, certificate, or permit;

(b) refuses to grant a license to an air school or to an aeronautics instructor in ground subjects; or

(c) issues an order requiring certain things to be done or revoking a license or certificate.

(2) An order made by the department under this title shall be served upon the interested persons by registered or certified mail or in person.

(3) (a) A person aggrieved by an order of the department or by the granting or denial of a license, certificate, or registration may, within 10 days after receiving notice of the department's order or action, appeal from the order or action to the district court of the county in which the person resides or the county in which any property affected by the order or action is located.

(b) The appellant shall file with the clerk of the district court to which the appeal is taken a notice of appeal which shall state the substance of the order or action appealed from, the date of the order or action, and that the person appeals to the court from it.

(c) The appellant shall serve a copy of the notice of appeal upon the department. The order of filing and service is immaterial.

(d) The appeal shall be heard not less than 10 days or more than 30 days after the filing of the notice of appeal unless the judge, for sufficient cause resulting from press of business or other reason, is unable to hear the appeal within that time. In that event, the hearing may be deferred until it can be heard by the court. The appeal may be heard without formal pleadings.

History: En. Sec. 18, Ch. 152, L. 1945; amd. Sec. 17, Ch. 348, L. 1974; R.C.M. 1947, 1-310(part); amd. Sec. 3, Ch. 398, L. 1985.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

67-3-105. Inspection powers. A person charged with the duty of enforcing this title may inspect and examine at reasonable hours any premises, buildings, or other structures where airports, restricted landing areas, air schools, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

History: En. Sec. 18, Ch. 152, L. 1945; amd. Sec. 17, Ch. 348, L. 1974; R.C.M. 1947, 1-310(part).

Part 2

Aircraft, Airmen, and Instructors

67-3-201. Aircraft registration and licensing required. (1) Except as provided in 67-3-102 and in subsection (6) of this section, a person may not operate or cause or authorize to be operated a civil aircraft within this state unless the aircraft has an appropriate effective registration, license, certificate, or permit issued or approved by the United States government which has been registered with the department and the registration with the department is in force.

(2) Aircraft customarily kept in this state must be registered on or before March 1 of each year with the department, which must charge a fee therefor according to the fee schedule in 67-3-206. The registration must be renewed annually on or before March 1 each year.

(3) Section 67-3-202 and subsections (2) and (4) through (6) of this section do not apply to:

(a) aircraft owned and operated by the federal government, the state, or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation; or

(d) dismantled or otherwise nonflyable aircraft.

(4) An aircraft must be registered in a particular county of the state. This county must be the county of the owner's principal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county.

(5) Aircraft not registered in the state but entering the state to engage in commercial operations shall be registered prior to commencing operation.

(6) Owners of ultralight aircraft for which no appropriate effective license, certificate, or permit is issued by the United States government shall pay the fee required in 67-3-206 and file with the department an appropriate registration recognized and approved by the United States government.

History: (1)En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; Sec. 1-301, R.C.M. 1947; (2) thru (6)En. 1-325 by Sec. 1, Ch. 542, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; amd. Sec. 1, Ch. 210, L. 1977; Sec. 1-325, R.C.M. 1947; R.C.M. 1947, 1-301(part), 1-325; amd. Sec. 3, Ch. 229, L. 1979; amd. Sec. 2, Ch. 220, L. 1981; amd. Sec. 1, Ch. 157, L. 1983; amd. Sec. 126, Ch. 370, L. 1987; amd. Sec. 9, Ch. 453, L. 1987.

Cross-References

Applicability — special property tax, 15-24-303, 15-24-304.

67-3-202. Penalty for registration violations. (1) When an aircraft required to be registered under the provisions of subsections (2) and (4) through (6) of 67-3-201 is not registered on or before March 1 of the current calendar year, a penalty of five times the annual registration fee provided in 67-3-206 must be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) A person who owns or causes or authorizes an aircraft to be operated or who operates an aircraft required to be registered in the state without having displayed upon such aircraft a certificate of registration issued by the department for that aircraft commits a misdemeanor.

History: En. 1-326 by Sec. 2, Ch. 542, L. 1975; amd. Sec. 1, Ch. 213, L. 1975; amd. Sec. 2, Ch. 210, L. 1977; R.C.M. 1947, 1-326; amd. Sec. 4, Ch. 229, L. 1979; amd. Sec. 3, Ch. 220, L. 1981; amd. Sec. 2, Ch. 157, L. 1983; amd. Sec. 127, Ch. 370, L. 1987; amd. Sec. 10, Ch. 453, L. 1987.

Cross-References

Prorated taxes, 15-24-304.

Sentence — when no penalty is specified, 46-18-212.

67-3-203. Registration application — payment of fees — deposit of fees. (1) The owner of an aircraft subject to the fee in lieu of property tax must submit an application for registration or registration renewal to the department on or before March 1 of each year. The application must be accompanied by the fee in lieu of tax prescribed in 67-3-206.

(2) An aircraft subject to the fee in lieu of tax may not be registered until payment of the fee is made to the department.

(3) All fees paid to the department for registration must be deposited to the account established in 67-3-205.

History: En. Sec. 1, Ch. 453, L. 1987.

67-3-204. Fee in lieu of tax on registered aircraft — decal. (1) Except as provided in subsection (3), aircraft required to be registered in Montana are subject to a fee. The registration fee is in lieu of property tax.

(2) The department shall issue a decal to the owner of the aircraft required to be registered at the time of payment of the registration fee in lieu of tax, as provided in 67-3-201. No aircraft subject to a fee in lieu of tax may be operated in this state unless there is displayed on the aircraft a decal as visual proof that the fee in lieu of tax has been paid for the aircraft and that the aircraft is registered for the current year.

(3) Aircraft that meet the description of property described in 15-6-145 are exempt from the fee imposed by subsection (1). Aircraft subject to the fee in lieu of tax are exempt from all other taxation.

History: En. Sec. 2, Ch. 453, L. 1987; amd. Sec. 14, Ch. 773, L. 1991.

Compiler's Comments

1991 Amendment: In (3) substituted "15-6-145" for "15-6-147". Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

67-3-205. Aircraft registration account — source of funds — allocation. (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft as required in this part and 15-24-304 and all penalties collected for registration violations as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the counties in the proportion that each county's collections bear to the total collections statewide; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)(a) must be made twice annually by the department. The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.

(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.

(5) On receipt of the money allocated as provided in subsection (2)(a), the county treasurer shall distribute the money in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(6) The allocations required in subsection (2)(a) are considered statutory appropriations as described in 17-7-502.

History: En. Sec. 3, Ch. 453, L. 1987; amd. Sec. 8, Ch. 628, L. 1989.

67-3-206. Schedule of fees in lieu of tax for aircraft. (1) The appropriate fee in lieu of tax imposed on aircraft must be determined from the following schedule:

	YEARS				
	0 - 5	6 - 10	11 - 20	21 - 30	31 - 40
Single engine, fixed gear, 200 horsepower and under	$ 300	$ 175	$100	$ 50	$ 25
Single engine, fixed gear, over 200 horsepower	500	250	150	75	50
Single engine, retractable gear, 200 horsepower and under	600	300	175	100	75
Single engine, retractable gear, over 200 horsepower	700	400	200	125	100
Multi-engine, piston engine	800	500	250	175	150
Helicopter, piston engine	700	450	225	150	125
Single engine jet helicopter, prop jet	1,500	700	450	300	175
Multi-engine jet helicopter, prop jet	2,000	1,000	600	400	200
Jet engine, no propeller	3,000	1,500	800	500	250

(2) The fee in lieu of tax imposed on any glider, ultralight, gyrocopter, balloon, homebuilt aircraft, antiques, or any aircraft over 40 years old is $20.

History: En. Sec. 4, Ch. 453, L. 1987.

67-3-207 through 67-3-210 reserved.

67-3-211. Airman licensing. Except as provided in 67-3-102, a person may not engage in aeronautics as an airman in this state unless he has from the department an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued or approved by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(part); amd. Sec. 3, Ch. 157, L. 1983.

67-3-212. Flight plan required. (1) The pilot of each flight carrying passengers and originating at a Montana public airport and to be flown under visual flight rules over a distance greater than 250 nautical miles is required to file a flight plan with the federal aviation administration.

(2) The department may adopt rules necessary to implement the provisions of this section.

History: En. Sec. 1, Ch. 417, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

67-3-213 through 67-3-220 reserved.

67-3-221. Repealed. Sec. 1, Ch. 373, L. 1985.

History: En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974; R.C.M. 1947, 1-303.

Part 3

Airport Licensing
(Repealed. Sec. 1, Ch. 398, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

67-3-301. En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974; R.C.M. 1947, 1-304.

67-3-302. En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974; R.C.M. 1947, 1-305.

67-3-303. En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974; R.C.M. 1947, 1-306.

67-3-304. En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974; R.C.M. 1947, 1-308.

67-3-305. En. Sec. 15, Ch. 152, L. 1945; R.C.M. 1947, 1-307.

67-3-306. En. Sec. 17, Ch. 152, L. 1945; R.C.M. 1947, 1-309.

Part 4

Air Operators and Air Carriers

67-3-401. Commercial air operators — insurance. The department shall require every commercial air operator to procure and continue in effect, as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967; amd. Sec. 19, Ch. 348, L. 1974; R.C.M. 1947, 1-314.

67-3-402. Amount of insurance. The department, after a public hearing, shall set the amount of liability insurance, required by 67-3-401, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967; amd. Sec. 20, Ch. 348, L. 1974; R.C.M. 1947, 1-315.

67-3-403. Evidence of insurance. (1) The protection required under 67-3-401, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) a copy of the policy of insurance issued by a company authorized to write the insurance in the state;

(b) a bond of a surety company authorized to write surety bonds in the state; or

(c) evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department, a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, a photostatic copy of the original policy, an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers if the policies of insurance meet the rules adopted by the department.

History: En. Sec. 6, Ch. 122, L. 1967; amd. Sec. 21, Ch. 348, L. 1974; R.C.M. 1947, 1-316.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Copy of policy to mortgagor or pledgor, 33-15-412.

67-3-404. Continuation of insurance — notice upon cancellation. The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than 30 days' written notice to the department, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967; amd. Sec. 22, Ch. 348, L. 1974; R.C.M. 1947, 1-318.

67-3-405. Violations. A commercial air operator who knowingly refuses or fails to procure protection against liability as required by 67-3-401 is guilty of a misdemeanor, and each day during which that commercial air operator continues in default constitutes a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967; amd. Sec. 24, Ch. 348, L. 1974; R.C.M. 1947, 1-320.

Cross-References

Sentence — when no penalty is specified, 46-18-212.

67-3-406 through 67-3-420 reserved.

67-3-421 through 67-3-429. Repealed. Sec. 1, Ch. 422, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

67-3-421. En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; R.C.M. 1947, 1-323(1).

67-3-422. En. 1-323.1 by Sec. 28, Ch. 348, L. 1974; R.C.M. 1947, 1-323.1.

67-3-423. En. 1-323.2 by Sec. 29, Ch. 348, L. 1974; R.C.M. 1947, 1-323.2.

67-3-424. En. 1-323.3 by Sec. 30, Ch. 348, L. 1974; R.C.M. 1947, 1-323.3.

67-3-425. En. 1-323.4 by Sec. 31, Ch. 348, L. 1974; R.C.M. 1947, 1-323.4.

67-3-426. En. 1-323.5 by Sec. 32, Ch. 348, L. 1974; R.C.M. 1947, 1-323.5.

67-3-427. En. 1-323.6 by Sec. 33, Ch. 348, L. 1974; R.C.M. 1947, 1-323.6.

67-3-428. En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 208, L. 1969; amd. Sec. 34, Ch. 348, L. 1974; R.C.M. 1947, 1-324.

67-3-429. En. Sec. 1, Ch. 171, L. 1967; amd. Sec. 25, Ch. 348, L. 1974; R.C.M. 1947, 1-322.

CHAPTER 4

NOISE, HEIGHT, AND LAND USE REGULATION

Part 1 — General Provisions

67-4-101. Legislative finding and purpose.
67-4-102. Definitions.

Part 2 — Airport Influence Areas

67-4-201. Designation of airport influence areas.
67-4-202. Temporary effect of designation.
67-4-203. Development of criteria for regulation of influence area.
67-4-204. Amendment of criteria — redesignation of influence area.
67-4-205 through 67-4-210 reserved.
67-4-211. State lands.

Part 3 — Rules, Permits, and Variances

67-4-301. Local government to adopt rules.
67-4-302. Rulemaking — notice and hearing.
67-4-303. Rules to be reasonable — prior nonconforming uses.
67-4-304. Rules relative to zoning ordinances.
67-4-305 through 67-4-310 reserved.
67-4-311. Permit system.
67-4-312. Board of adjustment.
67-4-313. Variance.
67-4-314. Conditions on permit or variance.

Part 4 — Remedies

67-4-401. Penalty.
67-4-402. Injunction.

Chapter Cross-References
Public nuisance, 45-8-111.

Part 1

General Provisions

67-4-101. Legislative finding and purpose. It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this chapter to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

History: En. 1-724 by Sec. 1, Ch. 551, L. 1977; R.C.M. 1947, 1-724.

67-4-102. Definitions. (1) The definitions in 67-1-101 apply to this chapter.

(2) In this chapter the following definitions also apply:

(a) "Airport" means, for the purpose of this chapter, only those airports included on the national airport system plan.

(b) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

History: En. 1-725 by Sec. 2, Ch. 551, L. 1977; R.C.M. 1947, 1-725.

Part 2

Airport Influence Areas

67-4-201. Designation of airport influence areas. (1) A local government with an airport shall designate an airport influence area around the airport within 3 years from July 1, 1977. The designation shall be based on federal aviation administration rules and guidelines. However, no airport influence area may extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing shall be held by the local government following the procedure prescribed in 67-4-302.

(2) A map of the designation shall be filed with the county clerk and recorders of the affected counties and the city clerks of the affected cities and towns.

History: En. 1-726 by Sec. 3, Ch. 551, L. 1977; R.C.M. 1947, 1-726.

67-4-202. Temporary effect of designation. Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this chapter. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations.

History: En. 1-727 by Sec. 4, Ch. 551, L. 1977; R.C.M. 1947, 1-727.

Cross-References

Public nuisance, 45-8-111.

67-4-203. Development of criteria for regulation of influence area. (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare, and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;

(e) the future development of the airport;

(f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

History: En. 1-728 by Sec. 5, Ch. 551, L. 1977; R.C.M. 1947, 1-728.

67-4-204. Amendment of criteria — redesignation of influence area. (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

History: En. 1-732 by Sec. 9, Ch. 551, L. 1977; R.C.M. 1947, 1-732.

67-4-205 through 67-4-210 reserved.

67-4-211. State lands. When an airport influence area lies partially or entirely on state-owned lands, the department of state lands shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body.

History: En. 1-731 by Sec. 8, Ch. 551, L. 1977; R.C.M. 1947, 1-731.

Part 3

Rules, Permits, and Variances

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Zoning, Title 67, ch. 6, part 2.

No limitation on airport hazard zoning, 67-10-231, 67-11-241.

67-4-301. Local government to adopt rules. Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

History: En. 1-729 by Sec. 6, Ch. 551, L. 1977; R.C.M. 1947, 1-729.

67-4-302. Rulemaking — notice and hearing. Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken.

History: En. 1-730 by Sec. 7, Ch. 551, L. 1977; R.C.M. 1947, 1-730.

67-4-303. Rules to be reasonable — prior nonconforming uses. All rules adopted under this chapter shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses which may continue, but rules may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

History: En. 1-738 by Sec. 15, Ch. 551, L. 1977; R.C.M. 1947, 1-738.

67-4-304. Rules relative to zoning ordinances. (1) If a local government has adopted a zoning ordinance, any rules adopted under this chapter may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this chapter.

(2) Where a conflict exists between the rules adopted pursuant to this chapter and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

History: En. 1-737 by Sec. 14, Ch. 551, L. 1977; R.C.M. 1947, 1-737.

Cross-References

Municipal zoning, Title 76, ch. 2, part 3.

67-4-305 through 67-4-310 reserved.

67-4-311. Permit system. (1) The rules adopted pursuant to this chapter shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

(3) No permit may be granted which would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport influence area or any subsequent revisions to it or than it was prior to the application for a permit.

History: **En. 1-734 by Sec. 11, Ch. 551, L. 1977; R.C.M. 1947, 1-734.**

67-4-312. Board of adjustment. (1) All rules adopted pursuant to this chapter shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 76-2-321 through 76-2-328.

(2) All of the provisions of 76-2-321 through 76-2-328 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the local government may designate the members of that board as the board of airport hazard adjustment required by this chapter, in which case the terms of such members for purposes of this chapter are concurrent with their terms as members of the board of adjustment.

History: **En. 1-736 by Sec. 13, Ch. 551, L. 1977; R.C.M. 1947, 1-736.**

67-4-313. Variance. (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use his property in violation of the rules adopted pursuant to this chapter may apply to the board of airport hazard adjustment for a variance from the rules.

(2) A variance shall be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance shall be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this chapter or a person who takes or buys property subject to such a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from a local government for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

History: **En. 1-733 by Sec. 10, Ch. 551, L. 1977; R.C.M. 1947, 1-733.**

Cross-References
Public nuisance, 45-8-111.
Permits — variances, 67-6-207.

67-4-314. Conditions on permit or variance. Any permit or variance granted pursuant to this chapter may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.
History: En. 1-735 by Sec. 12, Ch. 551, L. 1977; R.C.M. 1947, 1-735.

Part 4

Remedies

67-4-401. Penalty. Any person who violates any provision of this chapter or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed $500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.
History: En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(1).

Cross-References
Enforcement, 67-5-211.
Injunction, 67-6-211.

67-4-402. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or the rules adopted under it.
History: En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(2).

Cross-References
Injunctions, Title 27, ch. 19.
Penalty — injunction, 67-6-211.

CHAPTER 5

AIRPORT HAZARD REGULATION

Part 1 — General Provisions

67-5-101. Purpose.
67-5-102. Exception — emergency landing strips.

Part 2 — Regulation and Restriction

67-5-201. Regulation of building heights.
67-5-202. Regulation of existing structures — power of acquisition.
67-5-203. Duty to acquire permit.

67-5-204. Restriction — lights.
67-5-205 through 67-5-210 reserved.
67-5-211. Enforcement.
67-5-212. Penalty.

Part 1

General Provisions

67-5-101. Purpose. For the purpose of ensuring safety from death or injury for aeronauts and passengers, to protect the property of those engaged in aeronautics, and to encourage and promote air travel and transportation of mail, passengers, express, and freight by air, it is considered necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated, controlled, or maintained by the United States, the state of Montana or any county or municipality thereof. In order to promote the public order, health, and safety by providing unobstructed air space for the safe descent, landing, ascent, and operation of aircraft utilizing public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained, or controlled by any of those public authorities shall be regulated and restricted as hereafter provided.

History: En. Sec. 1, Ch. 12, L. 1939; amd. Sec. 3, Ch. 232, L. 1977; R.C.M. 1947, 1-701.

67-5-102. Exception — emergency landing strips. This chapter shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as “emergency landing strips”, which do not provide at least 1,800 feet of landing area in all directions and which do not provide facilities for the housing, supply, and servicing of aircraft.

History: En. Sec. 7, Ch. 12, L. 1939; R.C.M. 1947, 1-707.

Part 2

Regulation and Restriction

67-5-201. Regulation of building heights. (1) The height of buildings and other structures shall be regulated for the purposes set forth in 67-5-101, considering among other things:

(a) requirements and facilities necessary to secure the safe descent, landing, ascent, and operation of aircraft utilizing the public airports and landing fields in the state of Montana;

(b) hazards from the obstruction of air space and the relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(c) the area within which buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields and the height of buildings or other structures within such area which is consistent with the safe use of such airports and landing fields; and

(d) the maintenance and use of either obstruction markers or lights, or both, upon buildings and other structures within such area as safety devices.

(2) The height of buildings and other structures is regulated and restricted within a distance of 2 miles from any public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(a) The trapezoidal portion of the total 2-mile zone area, 500 feet in width at the boundary of the field or airport and broadening to a width of 2,500 feet 2 miles distant, the centerline of which is a continuation of the centerline of each runway at and upon such public airports and landing fields, known as the approach zone, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(b) The remaining portion of the 2-mile zone area surrounding such public airports and landing fields, lying between the approach zones and known as turning zones, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

(3) In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object to the nearest side of the airport or landing field. In the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from the actual boundary.

History: En. Sec. 2, Ch. 12, L. 1939; amd. Sec. 4, Ch. 232, L. 1977; R.C.M. 1947, 1-702.

67-5-202. Regulation of existing structures — power of acquisition. With respect to any building or other structure existing on February 7, 1939, which does not conform to the regulations of this chapter in the manner of height, the governmental authority affected thereby (whether the United States, the state of Montana, the several counties, or the several municipalities) in its own right and name, to protect its own airports and landing fields and to carry out the purposes and provisions of this chapter, shall have and is hereby given the right and authority to acquire by purchase, grant, or condemnation, such estate or interest in any such building or structure or other object, whether natural object or not, and/or in the lands upon which situated as is necessary to vest full and absolute ownership and control in perpetuity of the space above such land to the extent necessary to correct or abate the height of any such nonconforming building or other structure or object to meet the requirements of this chapter as to height limitation within the zones designated.

History: En. Sec. 5, Ch. 12, L. 1939; R.C.M. 1947, 1-705.

67-5-203. Duty to acquire permit. (1) Each person, firm, or corporation in this state proposing to erect, establish, or maintain any building or other structure that would exceed the height limit established by law or to grow any natural object that would exceed such limit when grown, whenever the proposed erection or growth is within 2 miles of a public airport or landing field, shall apply to the proper officer of the United States or the state of Montana or any county or municipality thereof, whichever of those bodies has control of the airport or landing field affecting the area, for a permit to erect, establish, or maintain the structure, building, or object proposed.

(2) No permit may be granted unless the specifications of the building or other structure or object reveal that the total height does not or will not exceed the height limits fixed by law for the zone in which the same is to be established.

(3) No permit may be issued in violation of this section, and any permit which is issued in violation of this section is void.

History: En. Sec. 4, Ch. 12, L. 1939; amd. Sec. 5, Ch. 232, L. 1977; R.C.M. 1947, 1-704.

67-5-204. Restriction — lights. No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas so that the same shall reflect, glare, or shine upon or in the direction of the airports.

History: En. Sec. 8, Ch. 12, L. 1939; R.C.M. 1947, 1-708.

67-5-205 through 67-5-210 reserved.

67-5-211. Enforcement. It shall be the duty and authority of every public body or governmental authority owning, operating, or maintaining a public airport or landing field to enforce the provisions of this chapter as pertains to areas surrounding the particular airport under the control of such body, the same to be enforced in either the court of law or of equity in the state of Montana having jurisdiction of such action. Cases are to be instituted in the name of the governmental body charged hereunder with the enforcement hereof. Such action may be to prevent the erection, construction, or maintenance of such buildings or other structures or parts of buildings or structures as may exceed the height limits fixed by this law or to restrain, correct, or abate any such violation and to prevent the occupancy and use of any part of a building or structure erected in violation of this law.

History: En. Sec. 3, Ch. 12, L. 1939; R.C.M. 1947, 1-703.

Cross-References

Noise, height, and land use regulation — penalty, 67-4-401.

Airport zoning — penalty — injunction, 67-6-211.

67-5-212. Penalty. Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $500 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment.

Each such person, firm, or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued, or permitted by such person, firm, or corporation and shall be punishable as provided by such law.

History: **En. Sec. 12, Ch. 12, L. 1939; R.C.M. 1947, 1-709.**

CHAPTER 6

AIRPORT ZONING ACT

Part 1 — General Provisions

67-6-101. Short title.
67-6-102. Legislative finding and purpose.
67-6-103. Constitutional restriction.

Part 2 — Zoning

67-6-201. Airport zoning power.
67-6-202. Airport zoning regulations — procedure — commission.
67-6-203. Airport zoning regulations — requirements.
67-6-204. Zoning regulations — merger or conflict.
67-6-205. Airport zoning regulations — administration.
67-6-206. Board of adjustment.
67-6-207. Permits — variances.
67-6-208 through 67-6-210 reserved.
67-6-211. Penalty — injunction.

Part 3 — Miscellaneous Provisions

67-6-301. Acquisition of property rights when zoning not sufficient.

Chapter Cross-References

Planning and zoning, Title 76, ch. 2.

Part 1

General Provisions

67-6-101. Short title. This chapter shall be known and may be cited as the "Airport Zoning Act".

History: **En. Sec. 14, Ch. 287, L. 1947; R.C.M. 1947, 1-723.**

67-6-102. Legislative finding and purpose. (1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared:

(a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question;

(b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

(c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

History: En. Sec. 2, Ch. 287, L. 1947; R.C.M. 1947, 1-711.

67-6-103. Constitutional restriction. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

History: En. Sec. 10, Ch. 287, L. 1947; R.C.M. 1947, 1-719.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Eminent domain, Art. II, sec. 29, Mont. Const.

Part 2

Zoning

Part Cross-References

Rules, permits, and variances, Title 67, ch. 4, part 3.

No limitation on airport hazard zoning, 67-10-231, 67-11-241.

67-6-201. Airport zoning power. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, within or without the state, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

(3) If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection (1) and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection (2), the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located, the regulations of the political subdivision owning or controlling the airport shall govern and prevail.

History: En. Sec. 3, Ch. 287, L. 1947; R.C.M. 1947, 1-712.

67-6-202. Airport zoning regulations — procedure — commission. (1) In adopting, amending, and repealing airport zoning regulations under this chapter, the political subdivision or joint airport zoning board shall follow the procedure prescribed by the laws of this state for the adoption, amendment, or repeal of comprehensive zoning regulations, as provided in Title 76, chapter 2, part 3.

(2) Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

History: En. Sec. 5, Ch. 287, L. 1947; R.C.M. 1947, 1-714.

67-6-203. Airport zoning regulations — requirements. (1) All airport zoning regulations adopted under this chapter shall be reasonable, and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in 67-6-207(3).

History: En. Sec. 6, Ch. 287, L. 1947; R.C.M. 1947, 1-715.

67-6-204. Zoning regulations — merger or conflict. (1) In the event that a political subdivision had adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

(2) In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter and whether such other regulations were adopted by the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

History: En. Sec. 4, Ch. 287, L. 1947; R.C.M. 1947, 1-713.

67-6-205. Airport zoning regulations — administration. All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision; but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under 67-6-207(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

History: En. Sec. 8, Ch. 287, L. 1947; R.C.M. 1947, 1-717.

67-6-206. Board of adjustment. All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to be appointed in the manner and have and exercise all the powers provided in 76-2-321 through 76-2-328, and each and all of the provisions of said sections relating to appeals and judicial review shall be applicable to this chapter.

History: En. Sec. 9, Ch. 287, L. 1947; R.C.M. 1947, 1-718.

67-6-207. Permits — variances. (1) When advisable to facilitate the enforcement of this chapter, a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted. Whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change, or repair of nonconforming uses shall be granted.

(2) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

History: En. Sec. 7, Ch. 287, L. 1947; R.C.M. 1947, 1-716.

Cross-References

Noise, height, and land use regulation — permits and variances, 67-4-313, 67-4-314.

67-6-208 through 67-6-210 reserved.

67-6-211. Penalty — injunction. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than 6 months or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement; and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

History: En. Sec. 11, Ch. 287, L. 1947; R.C.M. 1947, 1-720.

Cross-References

Injunctions, Title 27, ch. 19.

Noise, height, and land use regulation — penalty and injunction, 67-4-401, 67-4-402.

Restrictions on height of structures and lights — enforcement and penalty, 67-5-211, 67-5-212.

Part 3

Miscellaneous Provisions

67-6-301. Acquisition of property rights when zoning not sufficient. The political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter, in any case in which:

(1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations.

History: En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721.

Cross-References

Restrictions on annexation power, 7-2-4503.

State airports — acquisition, 67-2-301.

Acquisition and establishment of airports and landing fields, 67-10-102.

Joint Airport Board, 67-10-205.

General powers of authority, 67-11-201.

Eminent domain, Title 70, ch. 30.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

MUNICIPAL AIRPORTS

Part 1 — General Provisions

67-10-101. Short title.
67-10-102. Acquisition and establishment of airports and landing fields.
67-10-103. Public purpose.
67-10-104. Construction.

Part 2 — General Powers of Municipality Relating to Airports

67-10-201. General municipal powers.
67-10-202. Creation of board — funding — rules.
67-10-203. Mutual assistance.
67-10-204. Joint exercise of powers.
67-10-205. Joint airport board.
67-10-206. Joint fund.
67-10-207. Supplementary powers.
67-10-208 through 67-10-210 reserved.
67-10-211. Assistance in airport road construction — department of transportation.
67-10-212 through 67-10-220 reserved.
67-10-221. Airport property — acquisition by eminent domain.
67-10-222. Airport property — disposal.
67-10-223 through 67-10-230 reserved.
67-10-231. No limitation on airport hazard zoning.

Part 3 — Operation of Airports

67-10-301. Municipal regulation.
67-10-302. Granting of operation and use privileges.
67-10-303. Delegation of authority.

Part 4 — Finance

67-10-401. Appropriations — taxation.
67-10-402. Tax levy.
67-10-403. Liens.
67-10-404. Airport revenues and sale proceeds.
67-10-405. Federal and state money.
67-10-406. Tax exemption.

Chapter Cross-References

Municipal and regional airport authorities, Title 67, ch. 11.

Part 1

General Provisions

67-10-101. Short title. This chapter may be cited as the "Municipal Airports Act".

History: En. Sec. 22, Ch. 288, L. 1947; R.C.M. 1947, 1-828; amd. Sec. 2, Ch. 140, L. 1979.

67-10-102. Acquisition and establishment of airports and landing fields. (1) Counties, cities, and towns in this state may, either individually or by the joint action of a county and one or more of the cities and towns within its border, acquire by gift, deed, purchase, or condemnation land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned, or controlled by such county, city, or town.

(2) In addition a county, city, or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns, or any combination of such counties, cities, or towns. Such airport need not be located, in whole or in part, within the limits of each subdivision participating in the joint venture.

History: En. Sec. 1, Ch. 108, L. 1929; re-en. Sec. 5668.35, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961; R.C.M. 1947, 1-801.

Cross-References

Power of city to acquire landing field, 7-14-4801.

State airports — acquisition, 67-2-301.

Acquisition of property rights when zoning not sufficient, 67-6-301.

Creation of Airport Board, 67-10-202.

67-10-103. Public purpose. (1) Any lands acquired, owned, controlled, or occupied by any county, city, or town, individually or pursuant to joint action as herein provided for the purposes enumerated in 67-10-102, are acquired, owned, controlled, and occupied for a public use and as a matter of public necessity, and such counties, cities, and towns, whether acting individually or jointly, have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

(2) The acquisition of any land or interest therein pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports and air navigation facilities, including the acquisition or elimination of airport hazards; and the exercise of any other powers herein granted to municipalities and other public agencies, to be severally or jointly exercised, are public and governmental functions, exercised for a public purpose and matters of public necessity and, in the case of any county, are county functions and purposes as well as public and governmental and, in the case of any municipality other than a county, are municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any municipality or other

public agency in the manner and for the purposes enumerated in this chapter are acquired and used for public and governmental purposes and as a matter of public necessity and, in the case of a county or municipality, for county or municipal purposes, respectively.

History: (1)En. Sec. 2, Ch. 108, L. 1929; re-en. Sec. 5668.36, R.C.M. 1935; amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, Ch. 88, L. 1961; Sec. 1-802, R.C.M. 1947; (2)En. Sec. 15, Ch. 288, L. 1947; Sec. 1-822, R.C.M. 1947; R.C.M. 1947, 1-802, 1-822; amd. Sec. 3, Ch. 140, L. 1979.

Cross-References

No immunity from suit, 2-9-111(4).

67-10-104. Construction. This chapter shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of municipal airports.

History: En. Sec. 19, Ch. 288, L. 1947; R.C.M. 1947, 1-826; amd. Sec. 4, Ch. 140, L. 1979.

Part 2

General Powers of Municipality Relating to Airports

Part Cross-References

Restrictions on annexation power, 7-2-4503.

67-10-201. General municipal powers. (1) Every municipality may, out of any appropriations or other money made available for such purposes, plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police airports and air navigation facilities, either within or without the territorial limits of such municipality and within or without the territorial boundaries of this state, including the construction, installation, equipment, maintenance, and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as an incident to the operation of its airport properties. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements, in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit safe and efficient operation of the airport; to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards; or to prevent the establishment of airport hazards.

(2) The municipality may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire existing airports and air navigation facilities, provided however it may not acquire or take over any airport or air navigation facility owned or controlled by another municipality or public

agency of this or any other state without the consent of such municipality or public agency.

(3) For the purposes of this chapter, a municipality may establish or acquire and maintain, within or bordering upon the territorial limits of the municipality, airports in, over, and upon any public waters of this state, any submerged lands under such public waters and any artificial or reclaimed lands which before the artificial making or reclamation thereof constituted a portion of the submerged lands under such public waters, and may construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

(4) All air navigation facilities established or operated by municipalities shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

(5) A municipality may enter into any contracts necessary for the execution of the powers granted it and for the purposes provided by this chapter.

History: En. Secs. 2, 13, Ch. 288, L. 1947; R.C.M. 1947, 1-809, 1-820; amd. Sec. 5, Ch. 140, L. 1979.

Cross-References

Airport easement acquisition, 67-2-301(3).

General powers of authority, 67-11-201.

67-10-202. Creation of board — funding — rules. (1) The county, city, or town, acting individually or acting jointly as authorized by 67-10-102, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same and for that purpose may create a board or body from the inhabitants of such county, city, or town, or such joint subdivisions of the state for the purpose of conferring upon them, and may confer upon them, the jurisdiction for the improvement, equipment, maintenance, and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance, and operation shall be a charge against such county, city, or town; or when a county, city, or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

(2) For the purpose of meeting the charges mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council or councils affected.

(3) All disbursements from such fund shall be made by order of such joint board or body, if one be created as authorized, otherwise under such rules as the joint control by the commissioners and council or councils may adopt.

History: En. Sec. 3, Ch. 108, L. 1929; re-en. Sec. 5668.37, R.C.M. 1935; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961; R.C.M. 1947, 1-803.

67-10-203. Mutual assistance. If any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality or municipalities in exercising the powers and authority granted by this chapter, such municipality may furnish assistance by gift of real or personal property or lease or loan thereof with or without charge or interest. In appropriating such property or money and providing for such assistance by taxation, the issuance of bonds, or other means, the municipality may exercise all of its powers as though used for its own direct purposes as provided in this chapter.

History: En. Sec. 12, Ch. 288, L. 1947; R.C.M. 1947, 1-819; amd. Sec. 6, Ch. 140, L. 1979.

67-10-204. Joint exercise of powers. (1) For the purposes of 67-10-204 through 67-10-206, unless otherwise qualified, the term "public agency" includes municipality, as defined in this title; any agency of the state government and of the United States; and any municipality, political subdivision, and agency of another state; and the term "governing body" means the governing body of a county or municipality and the head of the agency if the public agency is other than a county or municipality.

(2) All powers, privileges, and authority granted to any municipality by this chapter may be exercised and enjoyed jointly with any public agency of this state and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. If not otherwise authorized by law, any agency of the state government when acting jointly with any municipality may exercise and enjoy all of the powers, privileges, and authority conferred by this chapter upon a municipality.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-10-204 through 67-10-206. Concurrent action by ordinance, resolution, or otherwise of the governing bodies of the participating public agencies constitutes joint action. Each such agreement shall specify its duration; the proportionate interest which each public agency has in the property, facilities, and privileges involved; the proportion to be borne by each public agency of preliminary costs and costs of acquisition, establishment, construction, enlargement, improvement, and equipment of the airport or air navigation facility; the proportion of the expenses of maintenance, operation, regulation, and protection thereof to be borne by each; and such other terms as are required by the provisions of 67-10-204 through 67-10-206. The agreement may also provide for amendments thereof and conditions and methods of termination of the agreement; the disposal of all or any of the property, facilities, and privileges jointly owned, prior to or upon said property, facilities, and privileges, or any part thereof, ceasing to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any such disposal and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint venture which remains unpaid upon the disposal of all assets or upon

a termination of the agreement; and such other provisions as may be necessary or convenient.

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(a), (b); amd. Sec. 7, Ch. 140, L. 1979.

Cross-References

Joint exercise of powers, 67-11-203.

67-10-205. Joint airport board. (1) Public agencies acting jointly pursuant to 67-10-204 through 67-10-206 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. Per diem and mileage of such joint board may be set by resolution of the board of county commissioners. The number to be appointed and their term shall be provided for in the joint agreement. Each such joint board shall organize, select officers for terms to be fixed by the agreement, and from time to time adopt and amend rules for its own procedure. The joint board shall have power to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and such board may exercise on behalf of its constituent public agencies all the powers of each with respect to such airport, air navigation facility, or airport hazard, subject to the limitations of subsection (2) of this section.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be determined by a budget approved by the governing bodies of its constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums therefor fixed by the joint agreement or allotted in the annual budget, may be acquired by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-10-204 through 67-10-206 may be instituted only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common until conveyed by them to the joint board.

(d) The joint board shall not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into the contract, lease, or other arrangements contemplated by 67-10-302.

(e) Any resolutions, rules, or orders of the joint board dealing with subjects authorized by 67-10-301 shall become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, or orders of the joint board shall have the same force and effect in the territories or jurisdictions involved as the ordinance, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(c), (d).

Cross-References

State airports — acquisition, 67-2-301.

State airports — operation, 67-2-302.

Airport revenues and sale proceeds, 67-10-404.

67-10-206. Joint fund. For the purpose of providing a joint board with moneys for the necessary expenditures in carrying out the provisions of 67-10-204 and 67-10-205, a joint fund shall be created and maintained into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Each of the constituent public agencies shall provide its share of the fund from sources available to each. Any federal, state, or other contributions or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-10-205(2).

History: En. Sec. 14, Ch. 288, L. 1947; amd. Sec. 1, Ch. 10, L. 1975; R.C.M. 1947, 1-821(e).

67-10-207. Supplementary powers. In addition to the general and special powers conferred by this chapter, every municipality is authorized to exercise powers necessarily incidental to the exercise of such general and special powers.

History: En. Sec. 17, Ch. 288, L. 1947; R.C.M. 1947, 1-824; amd. Sec. 8, Ch. 140, L. 1979.

67-10-208 through 67-10-210 reserved.

67-10-211. Assistance in airport road construction — department of transportation. The department of transportation may, upon written application of the governing body of a municipality, assist the municipality in the location, establishment, construction, reconstruction, maintenance, and improvement of highways and roads to and from municipal airports and field development of them. The department of transportation shall lend its equipment, machinery, technical services, and supervision to the municipality, under agreements made with each municipality.

History: En. Sec. 1, Ch. 120, L. 1939; amd. Sec. 39, Ch. 348, L. 1974; R.C.M. 1947, 1-807; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

General powers of Department of Transportation, 60-2-201.

67-10-212 through 67-10-220 reserved.

67-10-221. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, the municipality shall proceed in the manner provided by the laws governing eminent domain of the state of Montana. The municipality is not precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. Sec. 3, Ch. 288, L. 1947; R.C.M. 1947, 1-810; amd. Sec. 9, Ch. 140, L. 1979.

Cross-References

State airport acquisition, 67-2-301.

Eminent domain, Title 70, ch. 30.

67-10-222. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, every municipality may by sale, lease, or otherwise dispose of any airport, air navigation facility, or other property or portion thereof or interest therein acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise shall be in accordance with the laws of this state or provisions of the charter of the municipality governing the disposition of other property of the municipality or agency of the state or federal government for aeronautical purposes incident thereto. The sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may consider in the best interest of the municipality.

History: En. Sec. 4, Ch. 288, L. 1947; R.C.M. 1947, 1-811; amd. Sec. 10, Ch. 140, L. 1979.

67-10-223 through 67-10-230 reserved.

67-10-231. No limitation on airport hazard zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. Sec. 18, Ch. 288, L. 1947; R.C.M. 1947, 1-825; amd. Sec. 11, Ch. 140, L. 1979.

Cross-References

Zoning, Title 67, ch. 6, part 2.

No limitation on airport hazard zoning, 67-11-241.

Municipal zoning, Title 76, ch. 2, part 3.

Part 3

Operation of Airports

67-10-301. Municipal regulation. (1) A municipality which has established or acquired or which may establish or acquire an airport or air navigation facility is authorized to adopt, amend, and repeal such reasonable ordinances, resolutions, rules, and orders as it shall deem necessary for the management, government, and use of such airport or air navigation facility under its control, whether situated within or without the territorial limits of the municipality. For the enforcement thereof, the municipality may, by ordinance or resolution, as may by law be appropriate, appoint airport guards or police with full police powers and fix penalties within the limits prescribed by law for the violation of the ordinances, resolutions, rules, and orders. Said penalties shall be enforced in the same manner in which penalties prescribed by other ordinances or resolutions of the municipality are enforced. To the extent that an airport or other air navigation facility controlled and operated by a municipality is located outside the territorial limits of the municipality, it shall, subject to federal and state laws and rules, be under the jurisdiction and control of the municipality controlling or operating it, and no other municipality shall have any authority to charge or exact a license fee or occupation tax for operations thereon.

(2) All ordinances, resolutions, rules, or orders which are issued by the municipality shall be kept in substantial conformity with the laws of this state or any regulations promulgated or standards established pursuant thereto and, as nearly as may be, with the federal laws governing aeronautics and the rules and standards duly issued thereunder.

History: En. Sec. 8, Ch. 288, L. 1947; R.C.M. 1947, 1-815.

Cross-References

Airport police officers — employment and education standards, 7-32-303.

Passenger terminals — fire protection and safety regulations, 50-61-103.

Joint Airport Board acting for municipality, 67-10-205.

Tax exemption, 67-10-406.

67-10-302. Granting of operation and use privileges. (1) In operating an airport or air navigation facility owned, leased, or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, enter into contracts, leases, and other arrangements for a term not exceeding 20 years with any persons:

(a) granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at such airport or air navigation facility; or

(c) making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

(2) In each case the municipality may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, a municipality may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 20 years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that no such person shall be granted any authority to operate such an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the municipality might not have undertaken under subsections (1) and (2) of this section.

History: En. Sec. 5, Ch. 288, L. 1947; R.C.M. 1947, 1-812.

Cross-References

Airport all-beverages license, 16-4-208.

Airport all-beverages license fee, 16-4-501.

67-10-303. Delegation of authority. Any authority vested by this chapter in a municipality or in the governing body thereof for the planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing of airports or other air navigation facilities established, owned, or controlled or to be established, owned, or controlled by the municipality may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers and duties must be prescribed in the resolution. However, the expense of such planning, establishment, development, construction, enlargement, improvement, maintenance, equipment, operation, regulation, protection, and policing is a responsibility of the municipality.

History: En. Sec. 7, Ch. 288, L. 1947; R.C.M. 1947, 1-814; amd. Sec. 12, Ch. 140, L. 1979.

Part 4

Finance

67-10-401. Appropriations — taxation. The governing body of any municipality having power to appropriate and raise money is authorized to appropriate, and to raise by taxation or otherwise, sufficient money to carry out the provisions and purposes of this chapter, within the limitations prescribed by law.

History: En. Sec. 9, Ch. 288, L. 1947; R.C.M. 1947, 1-816; amd. Sec. 13, Ch. 140, L. 1979.

Cross-References

General powers of airport authority, 67-11-201.

Municipal tax levy, 67-11-301.

67-10-402. Tax levy. (1) For the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and 7-6-4452, a tax on the dollar of taxable value of the property of said county, city, or town:

(a) not to exceed 2 mills for airports and landing fields; and

(b) not to exceed 2 mills for ports.

(2) In the event of a jointly established airport, landing field, or port, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture must pay.

(3) No property within any political subdivision may be subject to a tax pursuant to this section at an annual rate in excess of 2 mills for airports, landing fields, or ports unless it is found that the levy is insufficient for the purposes enumerated. In such a case the commissioners and councils acting are authorized and empowered to contract an indebtedness on behalf of such county, city, or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no bonds may be issued for such purpose until the proposition has been submitted to the

qualified electors and a majority vote cast therefor, except as provided in subsection (4).

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from such investments must be credited to the operations and maintenance budget of the airport or port governing body. The above provisions, notwithstanding other budget control measures and due to the uniqueness of the subject matter, are declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; re-en. Sec. 5668.38, R.C.M. 1935; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969; amd. Sec. 16, Ch. 158, L. 1971; amd. Sec. 3, Ch. 501, L. 1973; R.C.M. 1947, 1-804; amd. Sec. 14, Ch. 140, L. 1979; amd. Sec. 1, Ch. 231, L. 1981; amd. Sec. 18, Ch. 456, L. 1985.

Cross-References

All-purpose mill levy authorized, 7-6-4451.

Maximum all-purpose mill levy, 7-6-4452.

Federal Deposit Insurance Corporation, Title 32, ch. 1, part 6.

Finance, Title 67, ch. 11, part 3.

67-10-403. Liens. To enforce the payment of any charges for repairs or improvements to or storage or care of any personal property made or furnished by the municipality or its agents in connection with the operation of an airport or air navigation facility owned or operated by the municipality, the municipality shall have liens on such property, which shall be enforceable by the municipality as provided by law.

History: En. Sec. 6, Ch. 288, L. 1947; R.C.M. 1947, 1-813.

Cross-References

Liens, Title 71, ch. 3.

67-10-404. Airport revenues and sale proceeds. The revenues obtained by a municipality from the ownership, control, or operation of any airport or air navigation facility, including proceeds from the sale of any airport or portion thereof or air navigation facility property, must be deposited in a special fund to be designated the ".... airport fund", which revenues must be appropriated solely to, and used by the municipality for the purposes authorized by this chapter.

History: En. Sec. 10, Ch. 288, L. 1947; R.C.M. 1947, 1-817; amd. Sec. 15, Ch. 140, L. 1979.

Cross-References

Deposit of revenues from certain sources in all-purpose fund, 7-6-4133.

67-10-405. Federal and state money. (1) A municipality may accept, receive, receipt for, disburse, and spend federal and state money and other money, public or private, made available by grant or loan or both to accomplish any of the purposes of this chapter. All federal money accepted under this section must be accepted and spent by the municipality upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the municipality upon terms and conditions prescribed by the state. Unless otherwise prescribed by the agency from which the money is received, the chief financial officer of the municipality shall on its behalf deposit and keep all money received pursuant to this section in separate funds, designated according to the purposes for which the money is made available, in trust for those purposes.

(2) No application may be made by a municipality for federal aid, as provided in this section, unless the "project application", as defined in the Federal Airport Act of 1946 and regulations of the administrator of civil aeronautics, is first approved by the department.

(3) A municipality may, with the approval and consent of the department, designate the department as its agent to accept, receive, receipt for, and disburse federal and state money and other money, public or private, made available by grant or loan or both to accomplish any of the purposes of this chapter. A municipality may, with the consent of the department, designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, or equipment of an airport or other air navigation facility. All contracts made, let, or awarded by the department acting as agent of a municipality under this section must be made, let, or awarded pursuant to the laws governing the making of contracts by or on behalf of the state. The municipality may enter into an agreement with the department providing for payment to the department for services rendered as agent and prescribing the terms and conditions of the agency, in accordance with terms and conditions prescribed by the United States, if federal money is involved and in accordance with applicable state law. All federal money accepted under this section by the department must be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All money received by the department under this subsection must be deposited in the state treasury and, unless otherwise prescribed by the agency from which the money is received, must be kept in separate funds designated according to the purposes for which the money is made available and held by the state in trust for those purposes.

History: En. Sec. 11, Ch. 288, L. 1947; amd. Sec. 41, Ch. 348, L. 1974; R.C.M. 1947, 1-818; amd. Sec. 16, Ch. 140, L. 1979.

Cross-References

Federal aid, 67-2-403.

Airport property disposal, 67-10-222.

67-10-406. Tax exemption. Any property in this state acquired by a municipality for airport purposes pursuant to the provisions of this chapter and any income derived by such municipality from the ownership, operation, or control thereof is exempt from taxation to the same extent as other property used for public purposes. Any municipality is authorized to exempt from municipal taxation any property acquired within its boundaries by a public agency of another state for airport purposes and any income derived from such property to the extent that such other states authorize similar exemptions from taxation to municipalities of this state.

History: En. Sec. 16, Ch. 288, L. 1947; R.C.M. 1947, 1-823; amd. Sec. 17, Ch. 140, L. 1979.

CHAPTER 11

AIRPORT AUTHORITIES

Part 1 — Organization and General Provisions

67-11-101. Short title.
67-11-102. Municipal airport authority.
67-11-103. Regional airport authority.
67-11-104. Commissioners.
67-11-105. Functions — public and governmental.
67-11-106. Cooperation of municipality.

Part 2 — Powers

67-11-201. General powers of authority.
67-11-202. Rules.
67-11-203. Joint exercise of powers.
67-11-204. Joint board.
67-11-205. Joint fund.
67-11-206. Supplementary powers.
67-11-207 through 67-11-210 reserved.
67-11-211. Granting of operation and use privileges.
67-11-212 through 67-11-220 reserved.
67-11-221. Exercise of airport authority powers by department — exceptions.
67-11-222. Department control of airport operation and income.
67-11-223 through 67-11-230 reserved.
67-11-231. Airport property — acquisition by eminent domain.
67-11-232. Airport property — disposal.
67-11-233 through 67-11-240 reserved.
67-11-241. No limitation on airport hazard zoning.

Part 3 — Finance

67-11-301. Municipal tax levy.
67-11-302. County tax levy.
67-11-303. Bonds and obligations.
67-11-304. Debt service fund.
67-11-305. Federal and state money.
67-11-306. Tax exemption.

Part 4 — Extraterritorial Airports
67-11-401. Out-of-state airport jurisdiction — reciprocity.

Chapter Cross-References
Port authorities, Title 7, ch. 14, part 11.

Part 1

Organization and General Provisions

67-11-101. Short title. This chapter may be cited as the "Airport Authorities Act".

History: En. 1-925 by Sec. 24, Ch. 433, L. 1971; R.C.M. 1947, 1-925.

67-11-102. Municipal airport authority. Any municipality may, by resolution of its governing body, create a public body, corporate and politic, to be known as a municipal airport authority which shall be authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint not less than five persons as commissioners of the authority. The commissioners who are first appointed shall be designated to serve for terms of 1, 2, 3, 4, and 5 years, respectively, but thereafter each commissioner shall be appointed for a term of 5 years, except that vacancies occurring otherwise than by expiration of the term shall be filled for the unexpired term by the governing body.

History: En. 1-904 by Sec. 4, Ch. 433, L. 1971; amd. Sec. 1, Ch. 57, L. 1975; R.C.M. 1947, 1-904.

67-11-103. Regional airport authority. (1) Two or more municipalities may by joint resolution create a public body, corporate and politic, to be known as a regional airport authority. The resolution creating a regional airport authority shall create a board of not less than five commissioners; the number to be appointed, their term and compensation, if any, shall be provided for in the resolution. Each such regional airport authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from time to time rules for its own procedure not inconsistent with 67-11-104.

(2) A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a joint resolution consenting thereto; provided that if a municipal airport authority for any

municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

(3) A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities.

(4) A municipality shall not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof shall be given at least 10 days prior thereto in a newspaper published in the municipality or, if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.

(5) For the purpose of this chapter a regional airport authority shall have the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.

History: En. 1-905, 1-909 by Secs. 5, 8, Ch. 433, L. 1971; R.C.M. 1947, 1-905, 1-909(part).

67-11-104. Commissioners. (1) The powers of each authority shall be vested in the commissioners thereof. A majority of the commissioners of an authority shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

(2) There shall be elected a chairman and vice-chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

(3) A commissioner of an authority shall be entitled to the necessary expense, including travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners shall be filed with the authority.

History: En. 1-908 by Sec. 7, Ch. 433, L. 1971; amd. Sec. 4, Ch. 439, L. 1975; R.C.M. 1947, 1-908.

67-11-105. Functions — public and governmental. The acquisition of any land or interest therein, pursuant to this chapter; the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any powers herein granted to authorities and other public agencies to be severally or jointly exercised are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

History: En. 1-919 by Sec. 18, Ch. 433, L. 1971; R.C.M. 1947, 1-919.

67-11-106. Cooperation of municipality. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created upon such terms, with or without consideration, as it may determine, may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or to become available to or required by law to be used by the municipality for airport purposes be transferred or paid directly to the airport authority as such funds become available to the municipality;

(3) cause water, sewer, or drainage facilities or any other facilities which it is empowered to provide to be furnished adjacent to or in connection with such airports or air navigation facilities;

(4) dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or any other rights or privileges therein to the authority;

(5) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities;

(6) do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities; and

(7) enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

History: En. 1-921 by Sec. 20, Ch. 433, L. 1971; R.C.M. 1947, 1-921.

Cross-References

Municipal tax levy, 67-11-301.

Part 2

Powers

67-11-201. General powers of authority. An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter, including the power to certify annually to the governing bodies creating it the amount of tax to be levied by said governing bodies for airport purposes and including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities; provided, however, an authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality, or public agency;

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport and landing floats and breakwaters for the protection thereof.

History: En. 1-909 by Sec. 8, Ch. 433, L. 1971; R.C.M. 1947, 1-909(part).

Cross-References

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Airport easements, 67-2-301(3).

General municipal powers, 67-10-201.

Property acquisition by eminent domain, 67-11-231.

Out-of-state airport jurisdiction, 67-11-401.

67-11-202. Rules. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, and orders as it shall deem necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, order, or standard prescribed by the commission shall be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules.

History: En. 1-914 by Sec. 13, Ch. 433, L. 1971; R.C.M. 1947, 1-914.

67-11-203. Joint exercise of powers. (1) For the purposes of 67-11-203 through 67-11-205, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this title; any agency of the state government and of the United States; and any municipality, political subdivision, or agency of an adjoining state. The term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality.

(2) All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

(3) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of 67-11-203 through 67-11-205. Each agreement shall specify its duration; the proportionate interest which each public agency will have in the property, facilities, and privileges involved in the joint undertaking; the proportion of costs of operation, capital outlay, and maintenance to be borne by each public agency; and such other terms as are considered necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned prior to or at such times as the property, facilities, and privileges or any part thereof cease to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any disposal and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(1), (2).

Cross-References

Municipal airports — joint exercise of powers, 67-10-204.

67-11-204. Joint board. (1) Public agencies acting jointly pursuant to 67-11-203 through 67-11-205 shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed and their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, may plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, or airport hazard, subject to the limitations of subsection (2) of this section.

(2) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under 67-11-203 through 67-11-205 may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by the public agencies as tenants in common.

(d) The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. However, the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by 67-11-211.

(e) Resolutions, rules, or orders of the joint board dealing with subjects authorized by 67-11-211 become effective only upon approval of the governing bodies of the constituent public agencies. However, upon such approval, the resolutions, rules, or orders of the joint board shall have the same force in the territories or jurisdictions involved as the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(3), (4).

67-11-205. Joint fund. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of 67-11-203 through 67-11-205, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from such fund shall be made by order of the board, subject to the limitations prescribed in 67-11-204(2).

History: En. 1-918 by Sec. 17, Ch. 433, L. 1971; amd. Sec. 8, Ch. 232, L. 1977; R.C.M. 1947, 1-918(5).

67-11-206. Supplementary powers. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise such powers as are necessary incidental to the exercise of such general and special powers.

History: En. 1-923 by Sec. 22, Ch. 433, L. 1971; R.C.M. 1947, 1-923.

67-11-207 through 67-11-210 reserved.

67-11-211. Granting of operation and use privileges. (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed 30 years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case may the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed 30 years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person may be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsections (1) and (2) of this section.

History: En. 1-913 by Sec. 12, Ch. 433, L. 1971; R.C.M. 1947, 1-913; amd. Sec. 18, Ch. 140, L. 1979.

Cross-References

Airport police officers — employment and education standards, 7-32-303.

Airport all-beverages license, 16-4-208.

Airport all-beverages license fee, 16-4-501.

Passenger terminals — fire protection and safety regulations, 50-61-103.

67-11-212 through 67-11-220 reserved.

67-11-221. Exercise of airport authority powers by department — exceptions. The department shall have all powers of an airport authority, except powers to certify or levy taxes or issue bonds, for constructing and operating public airports or landing fields near international border ports of entry and near state or national parks or near or in recreational areas as the department may determine to be in the public interest.

History: En. 1-902 by Sec. 2, Ch. 433, L. 1971; amd. Sec. 43, Ch. 348, L. 1974; R.C.M. 1947, 1-902.

67-11-222. Department control of airport operation and income. The department may control the operation of airports constructed under the provisions of 67-11-221 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in the airport operating account within the enterprise fund. All expenditures from the account shall be within the limits of legislative appropriations and shall be made upon vouchers signed and approved by the director of the department.

History: En. 1-903 by Sec. 3, Ch. 433, L. 1971; amd. Sec. 44, Ch. 348, L. 1974; amd. Sec. 6, Ch. 232, L. 1977; R.C.M. 1947, 1-903; amd. Sec. 3, Ch. 277, L. 1983.

67-11-223 through 67-11-230 reserved.

67-11-231. Airport property — acquisition by eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by the laws of this state and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The municipality shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken.

History: En. 1-910 by Sec. 9, Ch. 433, L. 1971; R.C.M. 1947, 1-910.

Cross-References

Acquisition of landing fields and parking areas for aircraft, 7-14-4801.

67-11-232. Airport property — disposal. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility, or other property or portion thereof or interest therein acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality, or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

History: En. 1-911 by Sec. 10, Ch. 433, L. 1971; R.C.M. 1947, 1-911.

67-11-233 through 67-11-240 reserved.

67-11-241. No limitation on airport hazard zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

History: En. 1-924 by Sec. 23, Ch. 433, L. 1971; R.C.M. 1947, 1-924.

Cross-References

Municipal zoning, Title 76, ch. 2, part 3.

Part 3

Finance

67-11-301. Municipal tax levy. The airport authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made shall not exceed the maximum levy permitted by the laws of this state for airport purposes or any such lower limit as may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of such taxes when and as paid to the airport authority shall be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under 67-11-303, the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied, and deposited annually as herein provided until the bonds and interest thereon are fully paid.

History: En. 1-916 by Sec. 15, Ch. 433, L. 1971; amd. Sec. 2, Ch. 501, L. 1973; R.C.M. 1947, 1-916.

Cross-References

Municipal taxation, Title 7, ch. 6, part 44.

67-11-302. County tax levy. In counties supporting airports or airport authorities, a levy as provided for in 67-10-402 may be made for such purposes.

History: En. 1-917 by Sec. 16, Ch. 433, L. 1971; R.C.M. 1947, 1-917.

Cross-References

County taxation, Title 7, ch. 6, part 25.

67-11-303. Bonds and obligations. (1) An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 67-11-301 or other law for airport purposes;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of

such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this subsection (6), the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, may by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency; and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes are not subject to any limitation of rate or amount applicable to other municipal taxes but are limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipalities may determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution becomes effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for that purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The

notice and conduct of the election is governed, to the extent applicable, as provided for municipal general obligation bonds in Title 7, chapter 7, part 42, for an election called by cities and towns, and as provided for county general obligation bonds in Title 7, chapter 7, part 22, for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality has no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in subsection (1) above.

History: En. 1-912 by Sec. 11, Ch. 433, L. 1971; amd. Sec. 1, Ch. 501, L. 1973; amd. Sec. 7, Ch. 232, L. 1977; R.C.M. 1947, 1-912; amd. Sec. 19, Ch. 140, L. 1979; amd. Sec. 15, Ch. 500, L. 1981; amd. Sec. 179, Ch. 575, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 128, Ch. 370, L. 1987.

Cross-References

Debt management, Title 7, ch. 7.

67-11-304. Debt service fund. An airport authority may create a debt service fund and accumulate therein the sum of $5 million together with interest thereon for the use, repairs, maintenance, and capital outlays of an airport.

History: En. 1-906 by Sec. 6, Ch. 433, L. 1971; amd. Sec. 1, Ch. 86, L. 1975; R.C.M. 1947, 1-906; amd. Sec. 29, Ch. 281, L. 1983.

67-11-305. Federal and state money. (1) An authority may accept, receive, receipt for, and spend federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and spent by the authority upon terms and conditions prescribed by the state.

(2) An authority may designate the department as its agent to accept, receive, receipt for, and disburse federal and state moneys and other moneys, public or private, made available by grant or loan, to accomplish in whole or in part any of the purposes of this chapter and may designate the department as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with terms and conditions prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the department shall be accepted and transferred or spent by the department upon terms and conditions prescribed by the United States. All moneys received by the department under this subsection shall be deposited in the state treasury and, unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available and held by the state in trust for those purposes.

History: En. 1-915 by Sec. 14, Ch. 433, L. 1971; amd. Sec. 45, Ch. 348, L. 1974; R.C.M. 1947, 1-915.

Cross-References

Airport property — disposal, 67-11-232.

67-11-306. Tax exemption. Any property in this state acquired by an authority for airport purposes, pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof shall be exempt from taxation to the same extent as other property used for public purpose.

History: En. 1-920 by Sec. 19, Ch. 433, L. 1971; R.C.M. 1947, 1-920.

Cross-References

Municipal airports — tax exemption, 67-10-406.

Part 4

Extraterritorial Airports

67-11-401. Out-of-state airport jurisdiction — reciprocity. (1) This section may be cited as the "Extraterritorial Airports Section".

(2) For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

(3) This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

(4) Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, which shall be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain shall not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

(5) The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

History: En. 1-922 by Sec. 21, Ch. 433, L. 1971; R.C.M. 1947, 1-922.

Cross-References

General powers of authority — establishment of facilities within adjoining state, 67-11-201(3).

TITLE 68

RESERVED

TITLE 69

PUBLIC UTILITIES AND CARRIERS

Ch.
1. Structure and Organization of State Agencies.
2. General Regulatory Provisions.
3. Regulation of Utilities.
4. Utility Lines and Facilities.
5. Power and Energy Companies.
6. Communication Utilities.
7. Municipal Utilities.
Chapters 8 through 10 reserved.
11. Regulation of Carriers.
12. Motor Carriers.
13. Pipeline Carriers.
14. Railroads.

CHAPTER 1

STRUCTURE AND ORGANIZATION OF STATE AGENCIES

Part 1 — Public Service Commission

69-1-101. Definition of commission.
69-1-102. Creation of public service commission.
69-1-103. Composition of commission.
69-1-104. Public service commission districts.
69-1-105. Term of office.
69-1-106. Vacancies.
69-1-107. Chairman of commission.
69-1-108. Secretary of commission.
69-1-109. Employment of personnel.
69-1-110. Conduct of commission business.
69-1-111. Reimbursement for expenses.
69-1-112. Prohibition on acceptance of favors from railroads.
69-1-113. Removal or suspension of commissioner.
69-1-114. Fees.

Part 2 — Consumer Committee and Consumer Counsel

69-1-201. Definitions.
69-1-202 through 69-1-210 reserved.
69-1-211. Meetings of committee.
69-1-212. Compensation of committee members.
69-1-213 through 69-1-220 reserved.
69-1-221. Staff of consumer counsel.
69-1-222. Annual report.
69-1-223. Funding of office of consumer counsel.
69-1-224. Determination of fee.

69-1-225. Computation and collection of fee in absence of statement — penalty and interest.
69-1-226. Failure to pay fee — penalty and interest — collection of fee.
69-1-227. Warrant for distraint.
69-1-228. Credit for overpayment — interest on overpayment.
61-1-229 reserved.
69-1-230. Statute of limitations.

Part 3 reserved

Part 4 — Funding of Department of Public Service Regulation

69-1-401. Definitions.
69-1-402. Funding of the department of public service regulation.
69-1-403. Determination and collection of fee.
69-1-404. Annual review by legislative finance committee.

Chapter Cross-References

Department of Public Service Regulation, 2-15-2601.

Effect of local government utility services law, 7-13-4310.

Limitation on contributions to candidates for Public Service Commission, 13-37-216.

Candidates' election reports, 13-37-225 through 13-37-231.

Review of decisions by State Tax Appeal Board, 15-2-303.

Inapplicability of Montana Unfair Trade Practices and Consumer Protection Act of 1973, 30-14-105.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Pacific Northwest Electric Power and Conservation Planning Council, Title 90, ch. 4, part 4.

Part 1

Public Service Commission

69-1-101. Definition of commission. As used in this title, the term "commission" means the public service commission provided for in 2-15-2602.

History: En. by Code Commissioner, 1979.

69-1-102. Creation of public service commission. A public service commission is hereby created, whose duty it is to supervise and regulate the operations of public utilities, common carriers, railroads, and other regulated industries listed in this title. Such supervision and regulation shall be in conformity with this title.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part); amd. Sec. 1, Ch. 43, L. 1979.

Cross-References

Commission as head of Department of Public Service Regulation, 2-15-2601.

Creation of Public Service Commission, 2-15-2602.

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

Regulation of utilities, Title 69, ch. 3.

Supervision and regulation of motor carriers, 69-12-201.

Regulation of railroads, Title 69, ch. 14.

69-1-103. Composition of commission. The commission shall consist of five members, who shall be qualified electors of the district from which they are elected, with each such member elected from a separate district of the state.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Composition of Public Service Commission, 2-15-2602.

69-1-104. Public service commission districts. In this state there are five public service commission districts, with one commissioner elected from each district, distributed as follows:

(1) first district: Blaine, Chouteau, Daniels, Dawson, Fergus, Garfield, Glacier, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Pondera, Prairie, Richland, Roosevelt, Sheridan, Toole, Valley, and Wibaux Counties;

(2) second district: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone Counties;

(3) third district: Broadwater, Cascade, Jefferson, Judith Basin, Lewis and Clark, Meagher, Teton, and Wheatland Counties;

(4) fourth district: Beaverhead, Deer Lodge, Gallatin, Granite, Madison, Park, Powell, Ravalli, and Silver Bow Counties;

(5) fifth district: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties.

History: En. 70-101.1 by Sec. 2, Ch. 339, L. 1974; R.C.M. 1947, 70-101.1.

69-1-105. Term of office. (1) Every term shall be for a period of 4 years. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers and shall take office on the first Monday of January, next after their election.

(2) Each of said members of said commission, so elected, shall serve until his successor is elected and qualified.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Term of office, 2-15-2602.

69-1-106. Vacancies. Any vacancy occurring in the commission shall be filled by appointment by the governor. Such appointee shall hold office until the next general election and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the commission, there shall be elected one member to fill out the unexpired term for which such vacancy exists.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Vacancy in executive branch office, Art. VI, sec. 6, 14, Mont. Const.; Title 2, ch. 16, part 5.

Powers and duties of Governor, 2-15-201.

69-1-107. Chairman of commission. A chairman shall be selected by the commission from its membership at the first meeting of each year after a general election.

History: En. Sec. 1, Ch. 52, L. 1913; re-en. Sec. 3879, R.C.M. 1921; re-en. Sec. 3879, R.C.M. 1935; amd. Sec. 1, Ch. 339, L. 1974; R.C.M. 1947, 70-101(part).

Cross-References

Commission as head of Department of Public Service Regulation, 2-15-2601.

69-1-108. Secretary of commission. (1) The commission shall, immediately after its members have qualified, appoint a secretary to serve during the pleasure of the commission. The secretary shall be a qualified elector of the state.

(2) The secretary shall:

(a) keep a full and complete record of all proceedings of the commission;

(b) be the custodian of its records and file and preserve at the office of the commission all books, maps, documents, and papers entrusted to his care and be responsible to the commission for the same; and

(c) perform such other duties as the commission may prescribe.

History: (1)En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; Sec. 72-105, R.C.M. 1947; (2)En. Sec. 9, Ch. 37, L. 1907; Sec. 4371, Rev. C. 1907; re-en. Sec. 3790, R.C.M. 1921; re-en. Sec. 3790, R.C.M. 1935; Sec. 72-112, R.C.M. 1947; R.C.M. 1947, 72-105(part), 72-112; amd. Sec. 2, Ch. 43, L. 1979.

69-1-109. Employment of personnel. The commission shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said commission to the proper performance of its duties.

History: En. Sec. 5, Ch. 37, L. 1907; Sec. 4367, Rev. C. 1907; re-en. Sec. 3783, R.C.M. 1921; rep. in part by Ch. 176, L. 1931; re-en. Sec. 3783, R.C.M. 1935; R.C.M. 1947, 72-105(part).

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

69-1-110. Conduct of commission business. (1) The commission shall hold sessions at times and places in this state as may be expedient. A majority of the commission constitutes a quorum for the transaction of business.

(2) The members of the commission may administer oaths and affirmations.

(3) The commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings concerning railroad companies and other parties before it in the establishment of rates, orders, charges, and other acts required of it under the law.

History: En. Sec. 3, Ch. 37, L. 1907; Sec. 4365, Rev. C. 1907; re-en. Sec. 3781, R.C.M. 1921; re-en. Sec. 3781, R.C.M. 1935; amd. Sec. 10, Ch. 315, L. 1974; R.C.M. 1947, 72-103.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Investigations by Public Service Commission, 69-2-102.

69-1-111. Reimbursement for expenses. The commission, secretary, and such clerks, experts, and persons as may be employed shall be entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in 2-18-501 through 2-18-503. Such expenditure shall be sworn to by the person who incurred the expenses and be approved by the chairman of the commission or his designee.

History: Ap. p. Sec. 32, Ch. 52, L. 1913; re-en. Sec. 3912, R.C.M. 1921; re-en. Sec. 3912, R.C.M. 1935; amd. Sec. 47, Ch. 439, L. 1975; amd. Sec. 1, Ch. 205, L. 1977; Sec. 70-134, R.C.M. 1947; Ap. p. Sec. 7, Ch. 37, L. 1907; Sec. 4369, Rev. C. 1907; re-en. Sec. 3785, R.C.M. 1921; re-en. Sec. 3785, R.C.M. 1935; amd. Sec. 11, Ch. 315, L. 1974; amd. Sec. 49, Ch. 439, L. 1975; Sec. 72-107, R.C.M. 1947; R.C.M. 1947, 70-134, 72-107.

Cross-References

Authorized free transportation, 69-11-208.

69-1-112. Prohibition on acceptance of favors from railroads. (1) A public service commissioner or the secretary may not, directly or indirectly, solicit or request from or recommend to any railroad corporation or any officer, attorney, or agent thereof the appointment of any person to any place or position; nor shall any railroad corporation or its attorney or agent offer any place, appointment, or position or other consideration to such commissioners or to any clerks or employees of the commission; neither shall the commissioners or their secretary, clerks, agents, employees, or experts accept, receive, or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift, or gratuity of any kind from any railroad corporation.

(2) The request or acceptance by them, except as herein specified, of any such place or position, pass, present, gift, or other gratuity shall work a forfeiture of the office of the commissioner, secretary, clerk, agent, employee, or expert requesting or accepting the same. Any person violating any of the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 31, Ch. 37, L. 1907; Sec. 4394, Rev. C. 1907; re-en. Sec. 3813, R.C.M. 1921; re-en. Sec. 3813, R.C.M. 1935; amd. Sec. 14, Ch. 315, L. 1974; R.C.M. 1947, 72-136.

Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Governmental code of fair practices, Title 49, ch. 3.

69-1-113. Removal or suspension of commissioner. If any commissioner fails to perform his duties as provided in this title, he may be removed from office as provided by 45-7-401. Upon complaint made and good cause shown, the governor may suspend any commissioner, and if, in his judgment the exigencies of the case require, the governor may appoint temporarily some competent person to perform the duties of the suspended commissioner during the period of the suspension.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 3, Ch. 43, L. 1979.

Cross-References
Governmental code of fair practices, Title 49, ch. 3.

69-1-114. Fees. Each fee charged by the commission must be commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute. No fee set by the commission may exceed $500.

History: En. Sec. 3, Ch. 588, L. 1983.

Cross-References
Fees to be charged by commission, 69-3-204.

Part 2

Consumer Committee and Consumer Counsel

Part Cross-References
Penalties for violation of this part, 69-2-205.

69-1-201. Definitions. As used in this part and part 2 of chapter 2, the following definitions apply:

(1) "Committee" means the legislative consumer committee provided for in Title 5, chapter 15, part 1.

(2) "Consumer counsel" means the consumer counsel provided for in Title 5, chapter 15, part 2.

(3) "Regulated companies" means all those organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation or the public service commission or any successor agency.

History: Ap. p. Sec. 2, Ch. 65, L. 1973; Sec. 70-702, R.C.M. 1947; (2)En. by Code Commissioner, 1979; R.C.M. 1947, 70-702(part).

Cross-References
Consumer Counsel, Art. XIII, sec. 2, Mont. Const.

69-1-202 through 69-1-210 reserved.

69-1-211. Meetings of committee. The committee shall meet at least once each quarter to advise and consult with the consumer counsel.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).

Cross-References
Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-1-212. Compensation of committee members. Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

History: En. Sec. 4, Ch. 65, L. 1973; amd. Sec. 1, Ch. 341, L. 1974; amd. Sec. 7, Ch. 103, L. 1977; R.C.M. 1947, 70-704(part).

69-1-213 through 69-1-220 reserved.

69-1-221. Staff of consumer counsel. The consumer counsel may, with the approval of the committee, appoint employees and consultants necessary to carry out the provisions of this part and part 2 of chapter 2, within the limits of legislative appropriation.

History: En. Sec. 6, Ch. 65, L. 1973; R.C.M. 1947, 70-706.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

69-1-222. Annual report. The consumer counsel shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(7).

69-1-223. Funding of office of consumer counsel. (1) There is an account in the state special revenue fund to which all fees collected hereunder shall be deposited and from which all appropriations to the office of the consumer counsel shall be paid. An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within 90 days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in such form as the commission may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion thereof, separately stating gross revenues from sales to other regulated companies for resale; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(1), (2); amd. Sec. 1, Ch. 280, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 647, L. 1987.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Fund structure, Title 17, ch. 2.

69-1-224. Determination of fee. (1) Within 30 days following enactment of the legislative appropriation for the office of the consumer counsel, the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection (3), of the amount determined in subsection (1)(a) which will produce an amount equal to the base appropriation to the office of the consumer counsel for the first year of the appropriation, except that no regulated company owned and operated by any municipal corporation within this state shall be required to pay a sum in excess of .06 of 1% of its gross operating revenue; and

(c) give notice by mail to each regulated company of the percentage determined in subsections (1)(a) and (b) to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid in the first year of the appropriation.

(2) On or before May 30 of the first year of the biennium, the department of revenue shall repeat the steps required by subsection (1) and compute the percentage multiplier for the second year, giving notice to the regulated companies.

(3) (a) The department of revenue shall adjust the percentage multiplier quarterly if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(4) In the event the fee charged in one year is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of a fiscal year shall be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(3), (4); amd. Sec. 2, Ch. 280, L. 1979; amd. Sec. 3, Ch. 647, L. 1987.

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

69-1-225. Computation and collection of fee in absence of statement — penalty and interest. (1) If a regulated company or an officer or employee of a regulated company fails, neglects, or refuses to file the statement required by 69-1-223(2), the department of revenue may after the time for filing has expired proceed to inform itself, as best it may, regarding the regulated company's gross operating revenue from all activities regulated by the commission within the state for the calendar quarter, quarters, or portion thereof and may determine and fix the amount of the consumer counsel fee due.

(2) (a) When a deficiency is determined and the fee becomes final, the department shall mail a notice and demand for payment to the regulated company. The fee is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return.

(b) If payment is not made within 10 days, the amount of the deficiency is considered delinquent. A 10% penalty must be added to the amount of the deficiency.

(c) The taxpayer may seek review of the department's action pursuant to 15-1-211.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to file the statement is provided to the department.

History: En. Sec. 1, Ch. 195, L. 1979; amd. Secs. 8, 19, Ch. 676, L. 1991; amd. Sec. 27, Ch. 811, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 676 deleted former (2) that read: "(2) The department may add to the amount of the fee computed under subsection (1), in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of fee and penalty. Interest is computed from the date the fee is due to the date of payment"; deleted former (3) that read: "(3) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed"; and inserted (2) providing for notice, date of payment, interest, and a penalty for delinquency. Amendment effective April 27, 1991.

Chapter 811 in (3), near beginning of first sentence, substituted "notice, pursuant to 15-1-211" for "letter" and at end, after "interest", deleted "and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter, otherwise a lien may be filed" (amendments rendered void by Ch. 676) and inserted (3)(c) relating to review under 15-1-211.

Coordination: Section 19, Ch. 676, L. 1991, was a coordination section that provided that if Senate Bill No. 445 was passed and approved and if it included a section adopting a uniform tax appeal procedure, the bracketed language that constituted subsection (2) of this section was void. Senate Bill No. 445 was passed and approved as Ch. 811, L. 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Penalties for violation, 69-2-205.

69-1-226. Failure to pay fee — penalty and interest — collection of fee. (1) If a regulated company or an officer or employee of a regulated company files the statement required by 69-1-223(2) but fails, neglects, or refuses to pay the fee due within the time required, the department of revenue may after the time for payment has expired add to the fee due, in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of the fee. Interest is computed from the date the fee is due to the date of payment.

(2) The department of revenue shall mail to the regulated company a notice, pursuant to 15-1-211, setting forth the amount of the fee, penalty, and interest. The taxpayer may seek review of the department's action pursuant to 15-1-211.

(3) The 10% penalty may be waived by the department of revenue if reasonable cause for failure and neglect to make payment is provided to the department.

History: En. Sec. 2, Ch. 195, L. 1979; amd. Sec. 51, Ch. 439, L. 1981; amd. Sec. 9, Ch. 676, L. 1991; amd. Sec. 28, Ch. 811, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 676 in (1), at end of first sentence, deleted "and penalty"; and in (2) reduced time of remittance from 15 days to 10 days (rendered void by Ch. 811). Amendment effective April 27, 1991.

Chapter 811 in (2), near beginning of first sentence, substituted "notice, pursuant to 15-1-211" for "letter" and at end, after "interest", deleted "and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter, otherwise a warrant for distraint may be filed" and inserted last sentence relating to review under 15-1-211.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

Cross-References

Department of Revenue, Title 2, ch. 15, part 13.

Warrant for distraint, Title 15, ch. 1, part 7.

Penalties for violation, 69-2-205.

69-1-227. Warrant for distraint. If the fee imposed by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any claim, lien, or demand thereafter filed and recorded.

History: En. Sec. 3, Ch. 195, L. 1979; amd. Sec. 52, Ch. 439, L. 1981.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Liens, Title 71, ch. 3.

69-1-228. Credit for overpayment — interest on overpayment. (1) If the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of revenue for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

History: En. Sec. 11, Ch. 676, L. 1991.

Compiler's Comments

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Effective Date: Section 21, Ch. 676, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

61-1-229 reserved.

69-1-230. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of revenue.

History: En. Sec. 15, Ch. 676, L. 1991.

Compiler's Comments

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Effective Date: Section 21, Ch. 676, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

Part 3 reserved

Part 4

Funding of Department of Public Service Regulation

69-1-401. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of public service regulation provided for in Title 2, chapter 15, part 26.

(2) "Regulated companies" means all organizations, corporations, associations, or other public or private entities which now are or may hereafter become subject to regulation in any manner by the department of public service regulation, the public service commission, or any successor agency. The term does not include motor carriers regulated pursuant to Title 69, chapter 12.

History: En. Sec. 1, Ch. 32, Sp. L. June 1986.

69-1-402. Funding of the department of public service regulation. (1) All fees collected under this section must be deposited in the general fund. All appropriations to the department must be paid from the general fund. An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within 90 days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased from the amount appropriated to the department by the legislature for that fiscal year, includ-

ing both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature.

History: En. Sec. 2, Ch. 32, Sp. L. June 1986; amd. Sec. 4, Ch. 647, L. 1987.

69-1-403. Determination and collection of fee. (1) The fee provided for in 69-1-402 to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee, except that gross revenues from sales to other regulated companies for resale, as calculated by the public service commission, must be excluded from the determination of the total gross operating revenue pursuant to 69-1-224.

(2) The department of revenue shall give notice by mail to each regulated company of the percentage determined pursuant to 69-1-224 and this section to be applied to gross operating revenues reported under 69-1-223, excluding gross revenues from sales to other regulated companies for resale, to determine the amount of the fee to be paid in the first year of the appropriation.

(3) The fee provided for in 69-1-402 may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of notices required by 69-1-224(1) and (2), the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part.

History: En. Sec. 3, Ch. 32, Sp. L. June 1986; amd. Sec. 5, Ch. 647, L. 1987.

69-1-404. Annual review by legislative finance committee. (1) The legislative finance committee shall annually review the department's budget and the calculations made by the department of revenue in the determination of the fee pursuant to 69-1-403.

(2) The legislative finance committee shall, as provided in 5-11-210, report the results of its review to the legislature and shall include in its report any recommendations concerning the manner of funding the department.

History: En. Sec. 5, Ch. 32, Sp. L. June 1986; amd. Sec. 45, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: In (2) inserted reference to 5-11-210 and after "review to" deleted "each regular session of". Amendment effective March 20, 1991.

CHAPTER 2

GENERAL REGULATORY PROVISIONS

Part 1 — Role of Public Service Commission

69-2-101. Adoption of rules for rate cases.
69-2-102. Role of commission when consumer counsel protests.

Part 2 — Role of Consumer Counsel

69-2-201. Appearance at hearings by counsel.
69-2-202. Institution of and intervention in proceedings involving regulated companies.
69-2-203. Investigatory powers of counsel.
69-2-204. Representation of consuming public.
69-2-205. Violations.
69-2-206 through 69-2-210 reserved.
69-2-211. Notice to consumer counsel.
69-2-212. Notice to advise public of availability of consumer counsel.

Chapter Cross-References

Sewer rates — complaint procedure, 7-13-4208.

Effect of local government utility services law — power and duties of P.S.C. unaffected by water and sewer improvement districts, 7-13-4310.

Relocation of utilities' facilities, 60-4-402.

Part 1

Role of Public Service Commission

69-2-101. Adoption of rules for rate cases. The commission shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of railroads, motor carriers, and public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner.

History: En. 70-104.1 by Sec. 1, Ch. 137, L. 1977; R.C.M. 1947, 70-104.1.

Cross-References

Montana Administrative Procedure Act — adoption of rules, Title 2, ch. 4, part 3.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

69-2-102. Role of commission when consumer counsel protests. In any case involving an application by a regulated entity to the commission for authority to increase its rates which is actively contested by the consumer counsel, the commission shall leave representation of the interests of consumers to the consumer counsel when he timely petitions to become a party to such case. Nothing contained herein prohibits the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address such issue and such counsel fails to introduce sufficient or adequate evidence.

History: En. 70-707.1 by Sec. 1, Ch. 474, L. 1977; R.C.M. 1947, 70-707.1.

Cross-References

Conduct of hearing, 69-3-326.

Immunity for witnesses, 69-3-329.

Part 2

Role of Consumer Counsel

Part Cross-References

Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2.

69-2-201. Appearance at hearings by counsel. The consumer counsel may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence, and other matters.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(1).

Cross-References

Conduct of hearing, 69-3-326.

Immunity for witnesses, 69-3-329.

69-2-202. Institution of and intervention in proceedings involving regulated companies. (1) The consumer counsel may institute proceedings before the commission against regulated companies.

(2) The consumer counsel may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof, including review of decisions rendered by or failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to 27-19-203.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(2), (5); amd. Sec. 4, Ch. 43, L. 1979.

Cross-References

Intervention, Rule 24, M.R.Civ.P. (see Title 25, ch. 20).

69-2-203. Investigatory powers of counsel. (1) The consumer counsel has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana Rules of Civil Procedure and the Montana Administrative Procedure Act. It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure shall be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by 69-3-302 and 69-3-303 shall be suspended pending order of the district court.

(2) The consumer counsel may examine in any commission proceedings, under oath, any officer, director, manager, or employee of any regulated company and inspect the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(3), (4).

Cross-References

Montana Administrative Procedure Act — contested cases — discovery, 2-4-602.

Montana Rules of Civil Procedure concerning discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

69-2-204. Representation of consuming public. (1) The consumer counsel shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate.

(2) The consumer counsel has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee, in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 7, Ch. 65, L. 1973; amd. Sec. 2, Ch. 341, L. 1974; amd. Sec. 2, Ch. 138, L. 1975; amd. Sec. 1, Ch. 136, L. 1977; R.C.M. 1947, 70-707(6), (8).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-2-205. Violations. (1) Any regulated company or any officer or employee of any regulated company who, with intent to evade any fee or any requirement of this part or part 2 of chapter 1 or any lawful requirement of the commission thereunder, fails to pay the fee, to make, render, sign, or verify any statement, or to supply any information, within the time required by or under the provisions of this part or part 2 of chapter 1, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent statement or supplies any false or fraudulent information:

(a) shall be liable to a penalty of not more than $1,000, to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction; and

(b) shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed $1,000 or be imprisoned in the county jail not to exceed 1 year or both, at the discretion of the court.

(2) The certificate of the department of revenue to the effect that a fee has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this part or part 2 of chapter 1, shall be prima facie evidence that such fee has not been paid, that such statement has not been filed, or that such information has not been supplied.

History: En. Sec. 9, Ch. 65, L. 1973; amd. Sec. 1, Ch. 319, L. 1974; R.C.M. 1947, 70-709(5), (6).

Cross-References

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

69-2-206 through 69-2-210 reserved.

69-2-211. Notice to consumer counsel. In addition to all other forms of notice of hearings conducted by the commission provided for in this title, notices of all hearings shall be served upon the consumer counsel.

History: En. 70-710 by Sec. 1, Ch. 212, L. 1974; R.C.M. 1947, 70-710.

69-2-212. Notice to advise public of availability of consumer counsel. All forms of notice of public hearings conducted by the commission under this title, including all notices posted in public places or published in the legal advertising sections of newspapers, shall advise members of the consuming public of the existence of the office of the consumer counsel and its availability to function on behalf of members of the consuming public.

History: En. 70-711 by Sec. 2, Ch. 212, L. 1974; R.C.M. 1947, 70-711.

CHAPTER 3

REGULATION OF UTILITIES

Part 1 — Role of Commission

69-3-101. Meaning of term "public utility".
69-3-102. Supervision and regulation of public utilities.
69-3-103. General powers and rulemaking authority of commission.
69-3-104. Hearings to be open.
69-3-105. Access to commission records and reports — protective order.
69-3-106. Supervision of management of public utilities.
69-3-107. Investigation and reports of accidents.
69-3-108. Standards for and examinations of products and services.
69-3-109. Ascertaining property values.
69-3-110. Enforcement of public utility law.
69-3-111. Persons with interest in property leased or to be sold to public utility — exemption.

Part 2 — Requirements for Public Utilities

69-3-201. Utilities to provide adequate service at reasonable charges.
69-3-202. Records of public utilities.
69-3-203. Annual report to commission.
69-3-204. Fees to be charged by commission.
69-3-205. Verification of reports and other papers.
69-3-206. Penalty for failure to make reports or permit examinations.
69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations.
69-3-208. Effect of failure by utility to cooperate with commission.
69-3-209. Violations of public utility laws or orders.
69-3-210 through 69-3-220 reserved.
69-3-221. Public utility errors in billing customers.

Part 3 — Ratemaking Procedures

69-3-301. Schedule of rates, tolls, and charges.
69-3-302. Changes in schedules.
69-3-303. Notice and hearing on proposed change.
69-3-304. Temporary approval of rate increases or decreases.

69-3-305. Deviations from scheduled rates, tolls, and charges.
69-3-306. Classification of service.
69-3-307. Treatment of advertisement costs and contributions.
69-3-308 and 69-3-309 reserved.
69-3-310. Rulemaking authority.
69-3-311 through 69-3-320 reserved.
69-3-321. Complaints against public utility — hearing.
69-3-322. Treatment of multiple complaints.
69-3-323. Complaint by public utility.
69-3-324. Initiation of action by commission itself.
69-3-325. Notice of hearing.
69-3-326. Conduct of hearing.
69-3-327. Subpoena of witnesses.
69-3-328. Depositions of witnesses.
69-3-329. Immunity for witnesses.
69-3-330. Decision by commission.

Part 4 — Review of Commission Actions

69-3-401. Effective date of commission orders.
69-3-402. Action to challenge commission order.
69-3-403. Injunctive relief.
69-3-404. Review confined to record — exceptions.
69-3-405. Appeal of court decision.

Part 5 — Issuance of Securities and Creation of Liens

69-3-501. Regulation of issuance of securities and creation of liens by utilities.
69-3-502. Petition for issuance of securities.
69-3-503. Prompt consideration of petition.
69-3-504. Decision on petition.
69-3-505. Issuance of certain short-term obligations.
69-3-506. Unapproved securities void.
69-3-507. State not obligated on securities.

Part 6 — Small Power Production Facilities

69-3-601. Definitions.
69-3-602. Generation and sale of electricity by qualifying small power production facility.
69-3-603. Required sale of electricity under rates and conditions prescribed by commission.
69-3-604. Standards for determination of rates and conditions.

Part 7 — Conservation Purchases or Investments by Utilities

69-3-701. Definitions.
69-3-702. Eligible conservation.
69-3-703. Utility investment in or purchase of conservation — approval by commission.
69-3-704 through 69-3-710 reserved.
69-3-711. Criteria for allowable conservation — onsite audits.
69-3-712. Commission to include conservation in rate base — rate of return.
69-3-713. Prohibition against utility claiming conservation tax credit.

Part 8 — Montana Telecommunications Act

69-3-801. Short title.
69-3-802. Purpose.
69-3-803. Definitions.
69-3-804. Exemption for private telecommunications service.
69-3-805. Manner of regulation of telecommunications service.
69-3-806. Prohibition against cross-subsidization.
69-3-807. Regulation of rates and charges.
69-3-808. Forbearance of rate regulation to facilitate competition.

69-3-809. Alternative forms of regulation.
69-3-810. New service — withdrawal of services.
69-3-811. Costs for services provided — jurisdiction over complaints.
69-3-812 through 69-3-820 reserved.
69-3-821. Examination of books and records.
69-3-822. Rulemaking authority.
69-3-823. Exception.
69-3-824. No preemption of laws governing anticompetitive activity.

Part 9 — Rate Regulation of Small Telecommunications Providers

69-3-901. Definitions.
69-3-902. Rate regulation of small telecommunications provider.
69-3-903. Notice of rate increase.
69-3-904. Commission review and determination of rate increases.
69-3-905. Investigations by commission.
69-3-906. Petition for review of proposed rate increase.
69-3-907. Proposed increase effective unless requisite petitions received by commission.

Part 10 — Telephone Low Income Assistance Program

69-3-1001. Creation of program — amount of assistance.
69-3-1002. Eligibility — rules.
69-3-1003. Reimbursement for discounts.
69-3-1004. Administration — rules.
69-3-1005. Annual reports.
69-3-1006. Federal requirements.
69-3-1007. Applicability — voluntary participation or withdrawal.

Chapter Cross-References

Local government provisions not to modify this chapter, 7-3-4302.

Metropolitan sanitary district ratemaking, 7-13-144.

Effect of local government utility services law, 7-13-4310.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Special assessment — telecommunications services for the handicapped, 53-19-311.

Relocation of utilities' facilities, 60-4-402.

Part 1

Role of Commission

69-3-101. Meaning of term "public utility". (1) The term "public utility", within the meaning of this chapter, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; or

(c) a person exempted from regulation as a public utility as provided in 69-3-111.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part); amd. Sec. 3, Ch. 631, L. 1979; amd. Sec. 8, Ch. 607, L. 1981; amd. Secs. 4, 5, Ch. 588, L. 1983; amd. Sec. 1, Ch. 195, L. 1985; amd. Sec. 11, Ch. 546, L. 1985.

Cross-References

Effect of local government utility services law, 7-13-4310.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Utility defined, 60-4-401, 70-9-102, 75-20-104.

Records of public utilities, 69-3-202.

Montana Telecommunications Act, Title 69, ch. 3, part 8.

69-3-102. Supervision and regulation of public utilities. The commission is hereby invested with full power of supervision, regulation, and control of such public utilities, subject to the provisions of this chapter and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village.

History: En. Sec. 3, Ch. 52, L. 1913; re-en. Sec. 3881, R.C.M. 1921; re-en. Sec. 3881, R.C.M. 1935; R.C.M. 1947, 70-103(part).

Cross-References

Effect of local government utility services law, 7-13-4310.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-103. General powers and rulemaking authority of commission. (1) In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure and to do all things necessary and convenient in the exercise of the powers conferred by this chapter upon the commission; provided that nothing in this chapter shall be construed as vesting judicial powers on said commission or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test in a court of competent jurisdiction the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

(2) The commission shall have the power to:

(a) adopt reasonable and proper rules relative to all inspections, tests, audits, and investigations;

(b) adopt and publish reasonable and proper rules to govern its proceedings; and

(c) regulate the mode and manner of all investigations and hearings of public utilities and other parties before it.

History: (1)En. Sec. 4, Ch. 52, L. 1913; re-en. Sec. 3882, R.C.M. 1921; re-en. Sec. 3882, R.C.M. 1935; Sec. 70-104, R.C.M. 1947; (2)En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; Sec. 70-116, R.C.M. 1947; R.C.M. 1947, 70-104, 70-116(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-104. Hearings to be open. All hearings shall be open to the public.

History: En. Sec. 14, Ch. 52, L. 1913; re-en. Sec. 3894, R.C.M. 1921; re-en. Sec. 3894, R.C.M. 1935; R.C.M. 1947, 70-116(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-105. Access to commission records and reports — protective order. (1) Except as provided in subsection (2), the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission are open to the public at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information.

(2) The commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, required to carry out its regulatory functions.

History: En. Sec. 9, Ch. 52, L. 1913; re-en. Sec. 3889, R.C.M. 1921; re-en. Sec. 3889, R.C.M. 1935; amd. Sec. 29, Ch. 93, L. 1969; amd. Sec. 7, Ch. 315, L. 1974; R.C.M. 1947, 70-111; amd. Sec. 1, Ch. 77, L. 1987.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-106. Supervision of management of public utilities. (1) The commission shall have authority to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(2) The commission, any commissioner, or any person or persons employed by the commission for that purpose shall, upon demand, have the right to inspect the books, accounts, papers, records, and memoranda of any public utility and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs. Any person, other than one of said commissioners, who shall make such demand shall produce his authority to make such inspection.

(3) The commission may require by order or subpoena, to be served on any public utility in the same manner that a summons is served in a civil action in the district court, the production, within this state and at such time and place as it may designate, of any books, accounts, papers, or records kept by such public utility in any office or place without the state or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any public utility failing or refusing to comply with any such order or subpoena shall be subject to the liability named in 69-3-206.

History: En. Sec. 15, Ch. 52, L. 1913; re-en. Sec. 3895, R.C.M. 1921; re-en. Sec. 3895, R.C.M. 1935; R.C.M. 1947, 70-117.

Cross-References

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

Effect of noncooperation or noncompliance with Public Service Commission orders, 69-3-206, 69-3-208.

Subpoena of witnesses, 69-3-327, 69-14-113.

69-3-107. Investigation and reports of accidents. (1) The commission, some member thereof, or some person deputed by it shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state resulting in death or injury to any person of such gravity as to require 3 days or more of hospitalization. The report of the accident shall be filed in the office of the commission.

(2) It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident in the public utility's operation and resulting in death or injury to any person of such gravity as to require hospitalization, to report the accident within the next 2 business days, followed by written report in which shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident. The commission shall prescribe forms for the purpose of making such written reports.

History: En. Sec. 27, Ch. 52, L. 1913; re-en. Sec. 3907, R.C.M. 1921; re-en. Sec. 3907, R.C.M. 1935; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 70-129.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-108. Standards for and examinations of products and services. (1) The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

(3) The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall establish and declare reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request. These fees, however, shall be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service is found by the commission defective or insufficient in a degree to justify the demand for testing, or the commission may apportion the fees between the parties as justice may require.

(4) The commission may, in its discretion, purchase such materials, apparatus, and standard measuring instruments for such examinations and tests as it may deem necessary.

(5) The commission or its agents, experts, or examiners shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this chapter and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made, as herein provided, shall be subject to the penalties prescribed in 69-3-206.

History: En. Sec. 10, Ch. 52, L. 1913; re-en. Sec. 3890, R.C.M. 1921; re-en. Sec. 3890, R.C.M. 1935; R.C.M. 1947, 70-112.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-109. Ascertaining property values. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. The commission is not bound to accept or use any particular value in determining rates; provided, that if any value is used, such value may not exceed the original cost of the property. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, the public records of the various branches of the state government, or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

History: En. Sec. 6, Ch. 52, L. 1913; re-en. Sec. 3884, R.C.M. 1921; re-en. Sec. 3884, R.C.M. 1935; amd. Sec. 1, Ch. 28, L. 1975; R.C.M. 1947, 70-106.

Cross-References

Assessment of public utilities in one county, 15-8-406.

Properties centrally assessed, 15-23-101.

Montana Major Facility Siting Act, Title 75, ch. 20.

69-3-110. Enforcement of public utility law. (1) The commission shall inquire into any neglect or violation of the laws of this state by any public utility, as hereinbefore defined, doing business in this state or by the officers, agents, or employees thereof. The commission shall enforce the provisions of this chapter and report all violations thereof to the attorney general.

(2) All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced and are prima facie lawful from the date of the order until changed or modified by the commission or in pursuance of part 4. All rules, practices, and services prescribed by the commission shall be enforced and enforcement actions shall be brought pursuant to the provisions of part 4 until the rules, practices, or services are changed or modified by the commission upon a satisfactory showing being made.

(3) Upon the request of the commission, it is the duty of the attorney general or the prosecuting attorney of any county to aid in any investigation, prosecution, hearing, or trial had under the provisions of this chapter and to institute and prosecute all actions or proceedings necessary for the enforcement of this chapter.

(4) Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the state in the district court of any county having jurisdiction of the defendant. The attorney general shall be the counsel in any proceeding, investigation, hearing, or trial prosecuted or defended by the commission, as also shall any prosecuting attorney selected by the commission or other special counsel furnished the commission in any county where such action is pending.

(5) In addition to the other remedies provided by this chapter for the prevention and punishment of any violation of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this chapter and of the orders of the commission by proceedings in mandamus, by injunction, or by other civil remedies.

History: En. Secs. 24, 25, 30, 31, Ch. 52, L. 1913; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1921; re-en. Secs. 3904, 3905, 3910, 3911, R.C.M. 1935; R.C.M. 1947, 70-126, 70-127, 70-132, 70-133; amd. Sec. 5, Ch. 43, L. 1979.

Cross-References

Attorney General, Title 2, ch. 15, part 5.
County Attorney, Title 7, ch. 4, part 27.
Injunctions, Title 27, ch. 19.
Mandamus, Title 27, ch. 26.
Penalties, 69-3-206, 69-3-207.
Injunctive relief, 69-3-403.
Judicial remedies, 69-5-111.

69-3-111. Persons with interest in property leased or to be sold to public utility — exemption. (1) Upon application, the commission, by order, may determine that any person not otherwise a public utility is not a public utility subject to the jurisdiction, control or regulation of the commission under this title, solely because such person owns or controls any plant or equipment, any part of or undivided interest in a plant or equipment or any water right described in 69-3-101:

(a) which is leased or sold or held for lease or sale to any public utility or other lessee; or

(b) the operation and use of which is vested by lease or other contract in a public utility or other lessee; or

(c) for a period of not more than 90 days after termination of any lease or contract described in subsection (1)(a) or (1)(b) or after such person gains possession of such property following a breach of such lease or contract.

(2) Any order once issued may not be revoked or modified by the commission unless there is a material change in the lease or contract terms forming the basis of such order.

(3) The commission may, upon application by a public utility, issue its order approving the terms of any lease or contract described in subsection (1)(a) or (1)(b) for the purpose of qualifying any party thereto for an exemption by the United States securities and exchange commission, or its successor, from the federal Public Utility Holding Company Act of 1935.

(4) A public utility, as lessee of any plant or equipment, any part of, or undivided interest in, a plant or equipment or any water right described in 69-3-101 which is subject to any lease or contract described in this section, shall comply with this title, regarding such plant, equipment, or water right.

(5) Nothing in this section may be construed to alter or modify the authority of the commission to regulate the rates and services of a public utility that is subject to the provisions of this title.

History: En. Sec. 2, Ch. 195, L. 1985.

Cross-References

Certificate of water right, 85-2-315.

Transfer of appropriation right, 85-2-403.

Part 2

Requirements for Public Utilities

69-3-201. Utilities to provide adequate service at reasonable charges. Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, or regulated telecommunications service produced, transmitted, delivered, or furnished or for any service to be rendered as or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

History: En. Sec. 5, Ch. 52, L. 1913; re-en. Sec. 3883, R.C.M. 1921; re-en. Sec. 3883, R.C.M. 1935; R.C.M. 1947, 70-105; amd. Sec. 12, Ch. 546, L. 1985.

Cross-References

Definition of "public utility", 69-3-101.

Montana Telecommunications Act, Title 69, ch. 3, part 8.

69-3-202. Records of public utilities. (1) Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

(2) Every public utility engaged directly or indirectly in any other businesses than those mentioned in 69-3-101 shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other businesses, in which case all the provisions of this chapter shall apply with like force and effect to the books, accounts, papers, and records of such other businesses.

(3) The commission shall cause to be prepared suitable blanks for carrying out the purposes of this chapter and shall, when necessary, furnish such blanks to each public utility. No public utility shall keep any other books,

accounts, papers, or records of the business transacted than those prescribed or approved by the commission.

(4) Each public utility shall have an office in one of the towns, villages, or cities in this state in which its property or some part thereof is located and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers, or records required by the commission to be kept within the state shall at any time be removed from the state except upon such conditions as may be prescribed by the commission.

(5) Any commissioner or any person or persons authorized by the commission shall have the right to examine the books, accounts, records, and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission.

History: (1) thru (4)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3885, R.C.M. 1921; re-en. Sec. 3885, R.C.M. 1935; Sec. 70-107, R.C.M. 1947; (5)En. Sec. 7, Ch. 52, L. 1913; re-en. Sec. 3887, R.C.M. 1921; re-en. Sec. 3887, R.C.M. 1935; Sec. 70-109, R.C.M. 1947; R.C.M. 1947, 70-107, 70-109.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-203. Annual report to commission. (1) The accounts of all public utilities shall be closed annually on either June 30 or December 31, a balance sheet taken promptly therefrom, and full annual reports of the business of such utility made to the commission, not later than the first following September 15 if such accounts are closed on June 30 and not later than March 15 of the first following year when such accounts are closed on December 31.

(2) The reports shall be in such form as prescribed by the commission and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The commission may at any time call for desired information omitted from such reports or not provided for therein whenever, in the judgment of the commission, such information is necessary.

History: En. Sec. 7, Ch. 52, L. 1913; amd. Sec. 1, Ch. 186, L. 1919; re-en. Sec. 3886, R.C.M. 1921; amd. Sec. 1, Ch. 172, L. 1929; re-en. Sec. 3886, R.C.M. 1935; amd. Sec. 1, Ch. 160, L. 1945; amd. Sec. 1, Ch. 24, L. 1947; R.C.M. 1947, 70-108.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-204. Fees to be charged by commission. (1) The public service commission may, except as otherwise provided by law, require and receive fees before filing annual reports, schedules, and supplements not provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing notice as required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 6, Ch. 43, L. 1979; amd. Sec. 1, Ch. 500, L. 1979; amd. Sec. 6, Ch. 588, L. 1983.

Cross-References

Fees, 69-1-114.

69-3-205. Verification of reports and other papers. Every annual report, record, or statement required by this chapter to be made to the commission shall be sworn to by the proper officer, agent, or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record, or statement shall be deemed perjury, and the person making such false oath shall upon conviction be punished as in the case of other perjuries.

History: En. Sec. 29, Ch. 52, L. 1913; re-en. Sec. 3909, R.C.M. 1921; re-en. Sec. 3909, R.C.M. 1935; R.C.M. 1947, 70-131.

Cross-References

Perjury, 45-7-201.

69-3-206. Penalty for failure to make reports or permit examinations. (1) Any officer, agent, or person in charge of the books, accounts, records, and papers or any of them of any public utility who shall refuse or fail for a period of 30 days to furnish the commission with any report required by the provisions of this chapter and any officer, agent, or person in charge of any particular books, accounts, records, or papers relating to the business of such public utility who shall refuse to permit any commissioner or other person duly authorized by the commission to inspect such books, accounts, records, or papers on behalf of the commission shall be subject to a fine of not less than $100 or more than $1,000.

(2) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction. Each day's refusal or failure on the part of such officer, agent, or person in charge shall be deemed a separate offense and be subject to the penalty herein prescribed.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Supervision of management of public utilities, 69-3-106.

Standards for and examination of products and services, 69-3-108.

Deviations from scheduled rates, tolls, and charges, 69-3-305.

69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) Any person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, which applies to areas the commission has authority to enforce shall be subject to a fine of not less than $100 or more than $1,000. Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed $200,000 for any related series of violations.

(2) In determining the amount of the penalty, the following shall be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and such other matters as justice may require.

(3) Such fine shall be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section.

History: En. Sec. 8, Ch. 52, L. 1913; re-en. Sec. 3888, R.C.M. 1921; re-en. Sec. 3888, R.C.M. 1935; amd. Sec. 1, Ch. 248, L. 1969; R.C.M. 1947, 70-110(part); amd. Sec. 1, Ch. 170, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Supervision of management of public utilities, 69-3-106.

Standards for and examination of products and services, 69-3-108.

Deviations from scheduled rates, tolls, and charges, 69-3-305.

69-3-208. Effect of failure by utility to cooperate with commission. Any officer, agent, or employee of any public utility shall be subject to the penalty prescribed in 69-3-206 whenever the officer, agent, or employee shall:

(1) willfully fail or refuse to fill out and return any blanks as required by this chapter;

(2) willfully fail or refuse to answer any questions therein propounded;

(3) knowingly or willfully give a false answer to any such questions or evade the answer to such questions, where the fact inquired of is within his knowledge; or

(4) upon proper demand, willfully fail or refuse to exhibit to any commission or any commissioners or any person also authorized to examine the same, any book, paper, or account of such public utility which is in his possession or under his control.

History: En. Sec. 23, Ch. 52, L. 1913; re-en. Sec. 3903, R.C.M. 1921; re-en. Sec. 3903, R.C.M. 1935; R.C.M. 1947, 70-125.

Cross-References

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

69-3-209. Violations of public utility laws or orders. If any public utility violates any provision of this chapter, does any act herein prohibited, or fails or refuses to perform any duty enjoined upon it, fails to place in operation any rate or joint rate, or fails, neglects, or refuses to obey any lawful requirement or order made by the commission or any court, then for every such violation, failure, or refusal the public utility is subject to the penalty prescribed by 69-3-206.

History: En. Sec. 28, Ch. 52, L. 1913; re-en. Sec. 3908, R.C.M. 1921; re-en. Sec. 3908, R.C.M. 1935; R.C.M. 1947, 70-130; amd. Sec. 7, Ch. 43, L. 1979.

69-3-210 through 69-3-220 reserved.

69-3-221. Public utility errors in billing customers. (1) For the purposes of this section:

(a) "public utility" does not include a municipal utility as defined in chapter 7 of this title;

(b) a "customer billing error":

(i) includes any bill issued by the utility that is not designated as an estimated bill and that understates the amount owed by the customer;

(ii) includes a utility's failure to bill a customer for service provided that would be billed to the customer under the utility's normal billing practices;

(iii) excludes errors that result from the theft of service by the customer;

(iv) excludes errors involving a utility's industrial class customers; and

(v) excludes errors incurred in the billing of long distance services by a telecommunications utility.

(2) Whenever a public utility discovers a customer billing error, the utility may submit a bill to the customer for a period not to exceed the 6 months preceding the date the billing error is discovered.

(3) The commission may adopt rules to implement subsections (1) and (2).

History: En. Secs. 1, 2, Ch. 587, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Utility services, Title 7, ch. 13.

Theft of services, 45-6-305.

Obtaining communication services with intent to defraud, 45-6-306.

Liability for bypassing or tampering with meter, Title 69, ch. 4, part 11.

Part 3

Ratemaking Procedures

69-3-301. Schedule of rates, tolls, and charges. (1) Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established and which are in force at the time for any service performed by it within the state or for any service in connection therewith or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule all rules that in any manner affect the rates charged or to be charged for any service. When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission.

(2) A copy of so much of the schedule as the commission considers necessary for the use of the public shall be printed in plain type and kept on file in every station or office of the public utility where payments are made by the consumers or users. Such copy shall be open to the public and in such form and place as to be readily accessible to the public and conveniently inspected.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 8, Ch. 43, L. 1979.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-3-302. Changes in schedules. (1) No change shall be made in any schedule, including schedules of joint rates, except as approved by the commission, upon the passage of 9 months, or by operation of 69-3-907(1). If the 9-month time period expires prior to commission approval of a schedule, a utility may waive the time period.

(2) Notwithstanding any provision of this title to the contrary and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule filed with the commission pursuant to 69-3-301 shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first, unless the utility waives the 9-month time period. However, if the rates, tolls, or charges become effective because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at a per-annum rate determined by the commission, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules. In the case of an investor-owned utility, the interest rate set by the commission may not exceed the cost of equity capital as last determined by the commission.

(3) The commission may prescribe rules necessary to effectively administer this section.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 1, Ch. 362, L. 1983; amd. Sec. 8, Ch. 254, L. 1987.

Cross-References

Investigatory powers of Consumer Counsel, 69-2-203.

69-3-303. Notice and hearing on proposed change. (1) Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area or before any change may become effective due to the passage of 9 months, the commission shall publish a notice of the proposed change, conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing.

(2) The commission shall proceed to conduct the hearing under the Montana Administrative Procedure Act. The final decision of the commission

in any matter decided after a hearing conducted pursuant to this section shall conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.

(3) The consumer counsel may in his discretion petition to become a party to the hearing.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Montana Administrative Procedure Act, Title 2, ch. 4.

Investigatory powers of Consumer Counsel, 69-2-203.

Fee, 69-3-204.

69-3-304. Temporary approval of rate increases or decreases. The commission may, in its discretion, temporarily approve increases or decreases pending a hearing or final decision. If the final decision is to disapprove an increase, the commission may order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. If the final decision is to disapprove a decrease, the commission may order a surcharge to be paid by all consumers for the amount not collected retroactive to the date of the temporary approval. The commission shall order interest to be paid on a rebate or surcharge as determined by the commission. An order of the commission approving or denying a temporary rate increase or decrease shall be based upon consistent standards appropriate for the nature of the case pending and shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 52, L. 1913; re-en. Sec. 3891, R.C.M. 1921; re-en. Sec. 3891, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1975; amd. Sec. 1, Ch. 435, L. 1977; amd. Sec. 1, Ch. 467, L. 1977; R.C.M. 1947, 70-113(part); amd. Sec. 7, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act — judicial review, Title 2, ch. 4, part 7.

69-3-305. Deviations from scheduled rates, tolls, and charges. (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809. Additionally, a provider of regulated telecommunications service may offer, for a limited period of time, either rebates or reductions or waivers of installation charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing of services that remain fully tariffed requires advance approval of the commission. No promotional offering may combine monopoly services with competitive services. The commission may define the appropriate scope of promotions, rebates, and market trials, either by rule or in response to complaints. The commission may determine whether a particular sales activity under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(5) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts.

History: En. Sec. 12, Ch. 52, L. 1913; re-en. Sec. 3892, R.C.M. 1921; re-en. Sec. 3892, R.C.M. 1935; R.C.M. 1947, 70-114; amd. Sec. 1, Ch. 327, L. 1983; amd. Sec. 6, Ch. 210, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (4) allowing profitsharing, rebates, and promotional pricing and offerings and granting the Commission discretion in determining whether particular sales activities are unfairly discriminatory or not cost-effective; and made minor changes in style. Amendment effective March 27, 1991.

Cross-References

Prohibition against laws impairing contracts, Art. II, sec. 31, Mont. Const.

69-3-306. Classification of service. (1) The commission may prescribe classifications of the service of all public utilities. Such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

(2) The commission shall prescribe a declining block rate structure for electric service, when cost-justified.

History: En. Sec. 13, Ch. 52, L. 1913; re-en. Sec. 3893, R.C.M. 1921; re-en. Sec. 3893, R.C.M. 1935; R.C.M. 1947, 70-115; amd. Sec. 1, Ch. 517, L. 1985.

Cross-References

Fee, 69-3-204.

Power and energy companies, Title 69, ch. 5.

69-3-307. Treatment of advertisement costs and contributions. Costs or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates which may be charged by the public utilities pursuant to this chapter. This section shall not apply to advertising which encourages the conservation of energy or product safety or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section shall not apply to advertising which relates to special equipment that is available to aid the handicapped or to special services that are designed to protect the public health, welfare, and safety, to promote more efficient use of a communications system, or to promote increased use of regulated communications services.

History: En. 70-121.1 by Sec. 1, Ch. 297, L. 1975; R.C.M. 1947, 70-121.1; amd. Sec. 1, Ch. 452, L. 1989.

Cross-References

Credit for energy-conserving investments, 15-30-125.

Credit for energy-conserving expenditures, 15-32-109.

Credit for installing alternative energy system, Title 15, ch. 32, part 2.

Home weatherization programs, Title 90, ch. 4, part 2.

69-3-308 and 69-3-309 reserved.

69-3-310. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 8, Ch. 210, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-311 through 69-3-320 reserved.

69-3-321. Complaints against public utility — hearing. (1) The commission shall proceed, with or without notice, to make such investigation as it may deem necessary upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or club; by any body politic or municipal organization or association, the same being interested; or by any person, firm, or corporation, provided such person, firm, or corporation is directly affected thereby, that:

(a) any of the rates, tolls, charges, or schedules or any joint rate or rates are in any way unreasonable or unjustly discriminatory;

(b) any regulations, measurements, practices, or acts whatsoever affecting or relating to the production, transmission, delivery, or furnishing of heat, light, water, power, or regulated telecommunications service, or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory; or

(c) any service is inadequate.

(2) No order affecting such rates, tolls, charges, schedules, regulations, measurements, practices, or acts complained of shall be entered without a formal hearing, except the commission may issue an order to provide service to a residential consumer pending a hearing on a complaint by such consumer or by the consumer counsel on behalf of such consumer against a public utility,

providing that the hearing is held within 20 days unless further delayed by consent of all parties.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part); amd. Sec. 14, Ch. 546, L. 1985.

Cross-References

Witness' fees and mileage, 26-2-501, 26-2-505.

69-3-322. Treatment of multiple complaints. When complaint is made of more than one rate, charge, or practice, the commission may, in its discretion, order separate hearings upon the several matters complained of and at such times and places as it may prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-323. Complaint by public utility. Any public utility may make complaint as to any matter affecting its own product or service with like effect as though made by any mercantile, agricultural, or manufacturing society; body politic or municipal organization; or person. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-3-324. Initiation of action by commission itself. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, practices, and services and after a full hearing as provided in this part may make by order such changes as may be just and reasonable, the same as if a formal complaint had been made.

History: En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; R.C.M. 1947, 70-121(part).

69-3-325. Notice of hearing. The commission shall give the public utility and the complainant or complainants at least 10 days' notice of the time when and the place where such hearing will be held.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

Cross-References

Fee, 69-3-204.

69-3-326. Conduct of hearing. At the hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers, and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid. No fees or mileage shall be allowed unless the chairman of the commission shall certify to the correctness of the claim.

History: En. Sec. 17, Ch. 52, L. 1913; re-en. Sec. 3897, R.C.M. 1921; re-en. Sec. 3897, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1975; R.C.M. 1947, 70-119(part).

Cross-References

Witness fees in courts of record, 26-2-501.

Expert witnesses, 26-2-505.

Records of public utilities, 69-3-202.

69-3-327. Subpoena of witnesses. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member or the secretary thereof may apply to the clerk of the nearest district court for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court and punished accordingly.

History: En. Sec. 18, Ch. 52, L. 1913; re-en. Sec. 3898, R.C.M. 1921; re-en. Sec. 3898, R.C.M. 1935; R.C.M. 1947, 70-120.

Cross-References

Refusal to obey subpoena or testify, 3-1-501; Rule 45(f), M.R.Civ.P. (see Title 25, ch. 20); 26-2-104; 45-7-309.

Subpoenas, Title 26, ch. 2, part 1.

69-3-328. Depositions of witnesses. The commission or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

History: En. Sec. 20, Ch. 52, L. 1913; re-en. Sec. 3900, R.C.M. 1921; re-en. Sec. 3900, R.C.M. 1935; R.C.M. 1947, 70-122.

Cross-References

Depositions and discovery, Rules 26 through 32, M.R.Civ.P. (see Title 25, ch. 20).

69-3-329. Immunity for witnesses. (1) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this chapter on the ground of or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture. Except as provided in subsection (2), no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may have testified or produced any documentary evidence.

(2) No person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History: En. Sec. 22, Ch. 52, L. 1913; re-en. Sec. 3902, R.C.M. 1921; re-en. Sec. 3902, R.C.M. 1935; R.C.M. 1947, 70-124.

Cross-References

Right against self-incrimination, Art. II, sec. 25, Mont. Const.

Perjury, 45-7-201.

Self-incrimination and immunity, 46-4-305.

69-3-330. Decision by commission. (1) If, upon such hearing and due investigation, the rates, tolls, charges, schedules, or joint rates are found to be unjust, unreasonable, or unjustly discriminatory or to be preferential or otherwise in violation of the provisions of this chapter, the commission may fix and order substituted therefor such rates, tolls, charges, or schedules as are just and reasonable.

(2) If the commission determines that a rate, toll, or charge has been collected in violation of 69-3-305(1)(b), the commission may order refunds or credits as specified in 69-3-305(3).

(3) If the commission finds that any regulation, measurement, practice, act, or service complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory, or otherwise in violation of the provisions of this chapter or that the service is inadequate or any reasonable service cannot be obtained, the commission may substitute therefor other regulations, measurements, practices, services, or acts and make such order relating thereto as is just and reasonable.

(4) In any decision ordering a change in the rates which may be charged for electricity or natural gas, the commission shall list each expenditure submitted by the utility for allowance as an operating cost which is disallowed by the commission as an element of operating costs. The list of disallowed expenditures shall appear in the written decision of the commission and shall itemize each expenditure by amount, category, and purpose.

History: (1), (2)En. Sec. 19, Ch. 52, L. 1913; re-en. Sec. 3899, R.C.M. 1921; re-en. Sec. 3899, R.C.M. 1935; Sec. 70-121, R.C.M. 1947; (3)En. 70-136 by Sec. 1, Ch. 290, L. 1975; Sec. 70-136, R.C.M. 1947; R.C.M. 1947, 70-121(part), 70-136; amd. Sec. 2, Ch. 327, L. 1983.

Part 4

Review of Commission Actions

Part Cross-References

Applicability of Montana Rules of Civil Procedure, Rule 81, M.R.Civ.P. (see Title 25, ch. 20).

69-3-401. Effective date of commission orders. All orders of the commission shall become operative within 20 days after the filing of the order by the commission, subject to the right of stay and injunction as provided in this part.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Injunctive relief from Commission order, 69-3-403.

69-3-402. Action to challenge commission order. (1) Any party in interest being dissatisfied with an order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing any regulation, practice, or service may, within 30 days, commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate, fare, charge, classification, or joint rate fixed in such order is unlawful or unreasonable or that any such regulation, practice, or service fixed in such order is unlawful or unreasonable.

(2) The commission and other parties defendant shall file their answer to said complaint within 20 days after the service thereof, whereupon such action shall be at issue and stand ready for hearing upon 20 days' notice to either party.

(3) All actions brought under this part shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the hearing thereof.

(4) In all actions under this part, the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part); amd. Sec. 1, Ch. 366, L. 1979.

Cross-References

Venue, Title 25, ch. 2.

69-3-403. Injunctive relief. (1) Any party in interest, being dissatisfied with the order of the commission fixing any rate, fare, charge, classification, or joint rate or any order fixing or prescribing any rule, practice, or service, may apply to the district court having jurisdiction for an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. Upon proper showing an injunction shall be issued by such court.

(2) As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination, or in proceedings involving rates, the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(part).

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Suretyship, Title 28, ch. 11, part 4.

69-3-404. Review confined to record — exceptions. (1) Except as otherwise provided in this section, review shall be conducted by the court without a jury and shall be confined to the record.

(2) In cases of alleged irregularities in procedure before the agency not shown in the record, evidence thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(3) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court, before proceeding to render judgment, may transmit a copy of such evidence to the commission and, if such transmission is made, shall stay further proceedings in said action for 35 days from the date of such transmission. The court shall, within 14 days after the introduction of such evidence, decide whether or not to transmit a copy of such evidence to the commission. The court is considered to have ruled that the evidence need not be transmitted to the commission unless it orders otherwise within such 14-day period. Upon receipt of such evidence, the commission shall consider the same and may modify, amend, or rescind its order relating to such rate, fare, charge, classification, joint rate, regulation, practice, or service complained of in said action and shall report its action thereon to said court within 30 days from the receipt of such evidence.

(4) If the commission rescinds its order complained of, the action shall be dismissed. If it alters, modifies, or amends the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order is not rescinded or changed by the commission, judgment shall be rendered upon such original order.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(3), (4); amd. Sec. 2, Ch. 366, L. 1979; amd. Sec. 1, Ch. 187, L. 1983.

69-3-405. Appeal of court decision. Within 60 days after service of a copy of the order or judgment of the court, either party to said action may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

History: En. Sec. 26, Ch. 52, L. 1913; re-en. Sec. 3906, R.C.M. 1921; re-en. Sec. 3906, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1937; amd. Sec. 1, Ch. 475, L. 1977; R.C.M. 1947, 70-128(5).

Cross-References

Appeal to Supreme Court, 25-12-101; M.R.App.P. (see Title 25, ch. 21).

Part 5

Issuance of Securities and Creation of Liens

Part Cross-References
Uniform Commercial Code — investment securities, Title 30, ch. 8

69-3-501. Regulation of issuance of securities and creation of liens by utilities. (1) Whenever a public utility furnishing electric or gas service in the state has revenue derived from sources in Montana which exceeds $5 million or 5% of its gross revenue, the utility's right to issue, assume, or guarantee securities and to create liens on its property in the state is subject to the regulation and supervision of the commission, as set forth in this part.

(2) The public utility, when authorized by order of the commission and not otherwise, may issue stocks and stock certificates and may issue, assume, or guarantee other securities payable at periods of more than 12 months thereafter for the following purposes:

(a) the acquisition of property;

(b) the construction, completion, extension, or improvement of its facilities;

(c) the improvement or maintenance of its service;

(d) the discharge or lawful refunding of its obligations;

(e) the reimbursement of money actually expended for said purposes from income or from other money; or

(f) any other purpose approved by the commission.

History: En. Sec. 1, Ch. 74, L. 1961; R.C.M. 1947, 70-117.1; amd. Sec. 1, Ch. 354, L. 1979.

Cross-References
Liens — general provisions, Title 71, ch. 3, part 1.

69-3-502. Petition for issuance of securities. Such public utility shall, by written petition, filed with the commission and setting forth the pertinent facts involved, make application to the commission for an order authorizing the proposed issue, assumption, or guarantee of securities and the application of the proceeds therefrom for the purposes specified.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-503. Prompt consideration of petition. All applications to the commission hereunder shall be disposed of promptly and in any event within 30 days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said 30-day period, the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

History: En. Sec. 4, Ch. 74, L. 1961; R.C.M. 1947, 70-117.4.

69-3-504. Decision on petition. After such hearing and upon such notice as the commission may prescribe, the commission shall enter its written order approving the petition and authorizing the proposed securities transactions unless the commission shall find that:

(1) such transactions are inconsistent with the public interest;

(2) the purpose or purposes thereof are not permitted by this part; or

(3) the aggregate amount of the securities outstanding and proposed to be outstanding would exceed the fair value of the properties and business of the public utility.

History: En. Sec. 2, Ch. 74, L. 1961; R.C.M. 1947, 70-117.2(part).

69-3-505. Issuance of certain short-term obligations. Such public utility may issue notes or drafts maturing not more than 1 year after the date of such issue, renewal, or assumption of liability and aggregating, together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is primarily or secondarily liable, not more than 5% of the par value of the other securities of the public utility then outstanding, without application to or order of the commission. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issuance of such notes or drafts.

History: En. Sec. 3, Ch. 74, L. 1961; R.C.M. 1947, 70-117.3.

69-3-506. Unapproved securities void. Except as provided in 69-3-505, all securities issued, assumed, or guaranteed after July 1, 1961, without approval by the commission as provided herein shall be void.

History: En. Sec. 5, Ch. 74, L. 1961; R.C.M. 1947, 70-117.5.

69-3-507. State not obligated on securities. No provision of this part or any act or deed done or performed in connection therewith shall be construed to obligate the state to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed under the provisions of this part.

History: En. Sec. 6, Ch. 74, L. 1961; R.C.M. 1947, 70-117.6.

Cross-References

State debt, Art. VIII, sec. 8, Mont. Const.

State Finance, Title 17.

Part 6

Small Power Production Facilities

69-3-601. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Electric cooperative" means a rural electric cooperative organized under the laws of Montana, or a foreign corporation admitted to do business in Montana.

(3) "Utility" means any public utility supplying electricity and regulated by the commission.

(4) "Qualifying small power production facility" means a facility that:

(a) produces electricity by the use, as a primary energy source, of biomass, waste, water, wind, or other renewable resource, or any combination of those sources; or

(b) produces electricity and useful forms of thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes through the sequential use of energy known as cogeneration; and

(c) has a power production capacity that together with any other facilities located at the same site is not greater than 80 megawatts; and

(d) is owned by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility.

History: En. Sec. 1, Ch. 436, L. 1981; amd. Sec. 1, Ch. 232, L. 1983.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-602. Generation and sale of electricity by qualifying small power production facility. (1) A qualifying small power production facility may generate electricity from the sources described in subsections (4)(a) and (4)(b) of 69-3-601 and may contract for the sale of that electricity with a utility.

(2) A qualifying small power production facility may generate electricity from the sources described in subsections (4)(a) and (4)(b) of 69-3-601 and may contract for the sale of that electricity with an electric cooperative under terms and conditions mutually agreed upon between the parties and in compliance with the rates and regulations established by the Public Utility Regulatory Policies Act.

History: En. Sec. 2, Ch. 436, L. 1981; amd. Sec. 2, Ch. 232, L. 1983.

69-3-603. Required sale of electricity under rates and conditions prescribed by commission. (1) If a qualifying small power production facility and a utility are unable to mutually agree to a contract for the sale of electricity or a price for the electricity to be purchased by the utility, the commission shall require the utility to purchase the electricity under rates and conditions established under the provisions of subsection (2).

(2) The commission shall determine the rates and conditions of the contract upon petition of a qualifying small power production facility or a utility or during a rate proceeding involving the review of rates paid by a utility for electricity purchased from a qualifying small power production facility. The commission shall render a decision within 120 days of receipt of the petition or before the completion of the rate proceeding. The rates and conditions of the determination shall be made according to the standards prescribed in 69-3-604.

History: En. Sec. 3, Ch. 436, L. 1981.

69-3-604. Standards for determination of rates and conditions. (1) The commission shall determine the rates and conditions of the contract for the sale of electricity by a qualifying small power production facility according to the standards in subsections (2) through (5).

(2) Long-term contracts for the purchase of electricity by the utility from a qualifying small power production facility shall be encouraged in order to enhance the economic feasibility of qualifying small power production facilities.

(3) The rates to be paid by a utility for electricity purchased from a qualifying small power production facility shall be established with consideration of the availability and reliability of the electricity produced.

(4) The commission may set these rates by use of any of the following methods:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities.

(5) The commission may adopt rules further defining the criteria for qualifying small power production facilities, their cost-effectiveness, and other standards.

History: En. Sec. 4, Ch. 436, L. 1981; amd. Sec. 3, Ch. 232, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 7

Conservation Purchases or Investments by Utilities

69-3-701. Definitions. As used in this part, the following definitions apply:

(1) "Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source.

(2) "Commission" means the Montana public service commission created in 2-15-2602.

(3) "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of 69-3-702.

(4) "Residential building" means a building used for residential occupancy that:

(a) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and

(b) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units.

History: En. Sec. 1, Ch. 610, L. 1983; amd. Sec. 1, Ch. 304, L. 1987.

69-3-702. Eligible conservation. Conservation purchases or investments are eligible under this part if they are made to replace, upgrade, or enhance building shells, space heating or cooling equipment, or refrigeration equipment that was installed and in operation in the existing residential building at least 3 years before the conservation purchases or investments are made and if they are determined by the commission to cost no more than the utility's avoided costs.

History: En. Sec. 3, Ch. 610, L. 1983; amd. Sec. 2, Ch. 304, L. 1987.

69-3-703. Utility investment in or purchase of conservation — approval by commission. (1) A utility may:

(a) purchase conservation from a person or private firm; or

(b) directly engage in conservation investments.

(2) The conservation purchases or investments provided for in subsection (1) are subject to approval by the commission.

(3) Cost-effective conservation measures approved by the commission may, at the customer's discretion, be installed by either:

(a) a person or a private firm;

(b) the customer himself; or

(c) the utility.

History: En. Sec. 2, Ch. 610, L. 1983.

Cross-References

Credit for energy-conserving investments, 15-30-125.

Credit for energy-conserving expenditures, 15-32-109.

Credit for installing alternative energy system, Title 15, ch. 32, part 2.

Home weatherization programs, Title 90, ch. 4, part 2.

69-3-704 through 69-3-710 reserved.

69-3-711. Criteria for allowable conservation — onsite audits. (1) The commission shall approve cost-effectiveness criteria for conservation that will be placed into a utility's rate base under this part.

(2) The commission may conduct onsite energy audits to insure compliance with the criteria established under subsection (1).

History: En. Sec. 5, Ch. 610, L. 1983.

69-3-712. Commission to include conservation in rate base — rate of return. (1) In order to encourage the purchase of or investment in conservation by a utility, the commission shall include conservation purchases or investments eligible under 69-3-702 and in compliance with criteria adopted under 69-3-711 in a utility's rate base.

(2) In establishing such rate of return the commission may allow an increment of up to 2% added to the rate of return on common equity permitted on the utility's other investments.

(3) The commission shall allow the rate of return increment provided for in subsection (2) for a period not to exceed 30 years after the conservation is first placed in the rate base.

(4) The commission shall prescribe amortization periods for conservation that is included in a utility's rate base.

History: En. Sec. 4, Ch. 610, L. 1983.

69-3-713. Prohibition against utility claiming conservation tax credit. A utility whose conservation is placed in the rate base under this part may not claim the tax credit allowed in 15-32-107.

History: En. Sec. 6, Ch. 610, L. 1983.

Part 8

Montana Telecommunications Act

Part Cross-References

9-1-1 emergency telephone system, Title 10, ch. 4.

69-3-801. Short title. This part may be cited as the "Montana Telecommunications Act".

History: En. Sec. 1, Ch. 546, L. 1985.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-3-802. Purpose. The legislature declares that it remains the policy of the state of Montana to maintain universal availability of basic telecommunications service at affordable rates. To the extent that it is consistent with maintaining universal service, it is further the policy of this state to encourage competition in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of this part to provide a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment, and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services.

History: En. Sec. 2, Ch. 546, L. 1985; amd. Sec. 1, Ch. 210, L. 1991.

Compiler's Comments

1991 Amendment: At end of third sentence inserted "and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services". Amendment effective March 27, 1991.

69-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the public service commission.

(2) "Private telecommunications service" means a system, including the construction, maintenance, or operation thereof, for the provision of telecommunications service or any portion of such service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

(3) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

(4) "Resale of telecommunications service" means the resale of regulated telecommunications service, with or without adding value, provided any value added would not otherwise be subject to regulation.

History: En. Sec. 3, Ch. 546, L. 1985.

Cross-References

Public Service Commission, 2-15-2602.

69-3-804. Exemption for private telecommunications service. Construction, maintenance, or operation of a private telecommunications service does not constitute the provision of regulated telecommunications service, and a private telecommunications service is not subject to any of the provisions of this title. If any other person or entity, including the owners or shareholders of the entity owning or operating a private telecommunications service, uses the telecommunications service, whether for hire or not, the private telecommunications service is a regulated telecommunications service under this part. An occasional or accommodative use of a private telecommunication system by a third person is not a violation of this section.

History: En. Sec. 4, Ch. 546, L. 1985.

Cross-References

Construction and operation of telegraph line by railroad corporation, 69-14-563.

69-3-805. Manner of regulation of telecommunications service. (1) Before any person or entity provides regulated telecommunications service within the state of Montana, it shall file with the commission a notice including:

(a) the name and address of the provider;

(b) a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;

(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter.

(2) The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter.

History: **En. Sec. 5, Ch. 546, L. 1985.**

69-3-806. Prohibition against cross-subsidization. (1) No provider of regulated telecommunications service may use current revenues earned or expenses incurred in conjunction with services subject to regulation under this chapter to subsidize services which are not regulated or are not tariffed. Expenses incurred in conjunction with services not regulated or not tariffed under this chapter may not be attributed to services which are subject to regulation for any reason.

(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title.

History: **En. Sec. 6, Ch. 546, L. 1985.**

69-3-807. Regulation of rates and charges. (1) As to telecommunications service that is provided under regulation, the commission may establish specific rates, tariffs, or fares for the provision of the service to the public. The rates, tariffs, or fares must be just, reasonable, and nondiscriminatory.

(2) Alternatively, the commission may authorize the provision of regulated telecommunications service under terms and conditions that best serve the declared policy of this state. For a service detariffed under this subsection, the provider shall maintain a current price list on file with the commission and shall provide notice of changes in the price list as prescribed by the commission. The commission is not required to fix and determine specific rates, tariffs, or fares for the service and in lieu thereof may:

(a) totally detariff the service;

(b) detariff rates for the service but retain tariffs for service standards and requirements;

(c) establish only maximum rates, only minimum rates, or permissible price ranges as long as the minimum rate is cost compensatory; or

(d) provide such other rate or service regulation as will promote the purposes of this part.

(3) Except as provided in subsection (4), in determining applications under subsection (2), the commission shall consider the following factors:

(a) the number, size, and distribution of alternative providers of service;

(b) the extent to which services are available from alternative providers in the relevant market;

(c) the ability of alternative providers to make functionally equivalent or substitute services readily available;

(d) the overall impact of the proposed terms and conditions on the continued availability of existing services at just and reasonable rates; and

(e) other factors that the commission may prescribe through rulemaking that are appropriate to fulfill the purposes of this part.

(4) Notwithstanding the provisions of subsection (3), the commission may exercise its power under subsection (2)(c) with respect to any services of a telecommunications provider if the commission finds that action consistent

with the provisions of 69-3-802 and with the public interest. Noncompetitive local exchange access to end-users and carrier access services may not be detariffed.

(5) A provider of regulated message telecommunications service and related services shall average its service rates on its routes of similar distance within the state unless otherwise authorized by the commission. Nothing contained in this subsection may be construed to prohibit volume discounts, discounts in promotional offerings, or other discounts as long as the discounts are not offered in a discriminatory manner.

(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available.

History: En. Sec. 7, Ch. 546, L. 1985; amd. Sec. 3, Ch. 210, L. 1991.

Compiler's Comments

1991 Amendment: In (2) inserted second sentence regarding provision of a price list for detariffed service; deleted former (2)(c) that read: "(c) detariff rates but require notice of price changes to the commission and subscribers"; in (3), at beginning, inserted exception clause; substituted (4) regarding establishment of rates and price ranges only after certain findings have been made and prohibiting detariffing of certain access and services for former (4) that read: "(4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services"; inserted (5) requiring averaging of service rates; and made minor changes in style. Amendment effective March 27, 1991.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Ratemaking procedures, Title 69, ch. 3, part 3.

69-3-808. Forbearance of rate regulation to facilitate competition. (1) In accordance with the provisions of this section, the commission shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications service under stated or negotiated terms to any person or entity that has acquired or is contemplating acquisition of, through construction, lease, or any other form of acquisition, similar telecommunications service from an alternative source.

(2) At any time, the provider of regulated telecommunications service may file a verified application with the commission for forbearance of regulation to facilitate competition. The application must describe the telecommunications service to be offered, the customer to be served, and the party or parties offering similar service, together with other information and in a form that the commission may prescribe. The additional information must be reasonably related to the determination of the existence of an alternative offer but may not require information relating to the cost of providing the service.

(3) The commission shall approve or deny an application for forbearance of regulation to facilitate competition within 15 days after the filing of the application. If the commission has not acted on an application within the permitted time period, the application is considered granted. The commission shall deny the application only upon a finding that the application is incomplete or that the subject or similar service is not being offered to the customer

by parties other than the applicant. If a customer or potential customer of the provider seeking forbearance requests a quotation of prices from another provider of telecommunications service having tariffs or price lists for similar services on file with the commission, the commission may presume the existence of competition.

(4) The provisions of 2-4-601, relating to notice and hearing, do not apply to this section.

(5) Upon approval of the application, the provider of telecommunications service may negotiate with a person or an entity for the provision of the service without regard to its tariffs or price lists on file with the commission.

(6) Within 10 days after the conclusion of the negotiations, the provider of regulated telecommunications service shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service. Thereafter, for the term of the contract, the provider of regulated telecommunications service may provide the service to the customer without regard to its tariffs or price lists on file with the commission.

(7) Services provided pursuant to subsection (1) remain subject to the regulatory powers of the commission.

History: En. Sec. 8, Ch. 546, L. 1985; amd. Sec. 4, Ch. 210, L. 1991.

Compiler's Comments

1991 Amendment: In (3), in first sentence, increased from 10 to 15 the number of days allowed the Commission for approval or denial of an application, at end, after "application", deleted "except that the commission may by order defer action for an additional 5-day period", and inserted fourth sentence regarding presumption of competition; in (5), after "tariffs", inserted "or price lists" and after "on file" substituted "with" for "approved by"; in (6), near beginning of second sentence after "Thereafter", inserted "for the term of the contract", near end, after "tariffs", inserted "or price lists", and after "on file" substituted "with" for "approved by"; and made minor changes in style. Amendment effective March 27, 1991.

69-3-809. Alternative forms of regulation. (1) The commission may authorize a provider of regulated telecommunication services, as defined in 69-3-803, to implement alternatives to the ratemaking practices required under parts 2, 3, and 9 of this chapter, including but not limited to price caps and equitable sharing of earnings or revenues between a provider of regulated telecommunications services and its customers.

(2) A provider of regulated telecommunications services may petition the commission to regulate the provider under an alternative form of regulation. The provider shall submit its plan for an alternative form of regulation with its petition. The commission's order on the petition must be issued no later than 9 months after the filing of the petition. The commission shall review and may authorize implementation of the plan if it finds, after notice and hearing, that the plan:

(a) will not degrade the quality of or the availability of efficient telecommunications services;

(b) will produce fair, just, and reasonable rates for telecommunications services;

(c) will not unduly or unreasonably prejudice or disadvantage a customer class;

(d) will reduce regulatory delay and costs;

(e) is in the public interest;

(f) will enhance economic development in the state;

(g) will result in the improvement of the telephone infrastructure in the state; and

(h) conforms to the purpose stated in 69-3-802 more nearly than regulation under part 2, 3, or 9 of this chapter conforms to the stated purpose.

(3) If the commission determines that the plan does not satisfy the requirements of this section, it may either reject the petition or issue a proposed order modifying the plan as submitted by the provider.

(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan.

(5) Upon petition or upon its own motion, the commission may rescind its approval or amend an alternative form of regulation if, after notice and hearing, it finds that the conditions in subsection (2) are no longer satisfied.

(6) Nothing contained in this section may be construed as limiting or otherwise affecting the commission's authority to conduct investigations or hear complaints as provided in part 3 of this chapter.

History: **En. Sec. 2, Ch. 210, L. 1991.**

Compiler's Comments

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-810. New service — withdrawal of services. (1) A provider of regulated telecommunications service shall provide notice, in the form prescribed by the commission, of its intent to offer a new service to its customers. The notice must include a description of the service, a minimum price, and the terms and conditions under which it will be offered. At the end of a 10-day comment period for interested parties, the commission may immediately approve, suspend, or disapprove the new service offering or it may allow the interim introduction of the service pending a hearing at a later date. If the commission has not acted at the end of 30 days following issuance of notice, the provider may proceed to offer the service.

(2) A new service may be offered on a detariffed basis. A price list containing the price of the new service must be filed with the commission at the time the service is offered to the public.

(3) For purposes of this section, "new service" means any service that is introduced separately or in combination with other services and that is not functionally required to provide local exchange service or that is not a repackaged current service or a direct replacement for a regulated telecommunications service.

(4) A provider of regulated telecommunications service may withdraw a service upon 30 days' notice to the commission and to the users of the service. The commission may, however, suspend the withdrawal of the service, either on its own motion or at the request of an interested person, and shall then proceed to hearing.

History: En. Sec. 5, Ch. 210, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-811. Costs for services provided — jurisdiction over complaints. (1) Prices charged for a regulated telecommunications service must be above relevant costs unless otherwise ordered by the commission. If the commission determines that a price is below relevant costs, it may ensure that shareholders and not ratepayers are responsible for any relevant costs not recovered through prices.

(2) With regard to competitive services, the term "relevant costs" includes the price for any components that are used by the telecommunications provider and that would be essential for alternative providers to use in providing the competitive services pursuant to commission-approved methodology.

(3) The commission has jurisdiction to consider complaints and initiate investigations to determine whether the price charged by a provider of regulated telecommunications service is above relevant costs. The commission may also consider complaints that a pricing or promotional practice violates any provision of this title.

History: En. Sec. 7, Ch. 210, L. 1991.

Compiler's Comments

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-812 through 69-3-820 reserved.

69-3-821. Examination of books and records. Nothing in this part precludes the commission from exercising its authority under the provisions of 69-3-202. The commission may require such accounting or reporting systems as are necessary to allow a proper allocation of investments, costs, or expenses that are joint or common to both regulated telecommunications services and other services or to both tariffed regulated telecommunications services and nontariffed regulated telecommunications services.

History: En. Sec. 9, Ch. 546, L. 1985.

69-3-822. Rulemaking authority. The commission may adopt rules to implement this part.

History: En. Sec. 10, Ch. 546, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

69-3-823. Exception. Nothing in this part affects the exemption from regulation provided by 35-18-104.

History: En. Sec. 13, Ch. 546, L. 1985.

69-3-824. No preemption of laws governing anticompetitive activity. Nothing in this part in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity.

History: En. Sec. 15, Ch. 546, L. 1985.

Cross-References

Consumer Protection Act, Title 30, ch. 14, part 1.

Unfair trade practices generally, Title 30, ch. 14, part 2.

Part 9

Rate Regulation of Small Telecommunications Providers

69-3-901. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the Montana public service commission.

(2) "Rate" means a charge by a small telecommunications provider to a subscriber for the initiation or continued provision of regulated telecommunications service. The term includes but is not limited to charges for installations, local service, toll service, directory assistance, and late payment.

(3) "Rate increase" means an increase in the rates for regulated telecommunications services provided by a small telecommunications provider and the creation of new rates.

(4) "Regulated telecommunications service" is as defined in 69-3-803.

(5) "Small telecommunications provider" means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than 5,000 subscribers in Montana. Rural telephone cooperatives organized under Title 35, chapter 18, are not small telecommunications providers.

(6) "Subscriber" means a person, partnership, corporation, or other entity acquiring regulated telecommunications service from a small telecommunications provider. There is one subscriber for each billed line of a small telecommunications provider.

History: En. Sec. 1, Ch. 254, L. 1987.

69-3-902. Rate regulation of small telecommunications provider. Except as provided in this part, small telecommunications providers are not subject to commission rate regulation provided in parts 3 and 8 of this chapter.

History: En. Sec. 2, Ch. 254, L. 1987.

69-3-903. Notice of rate increase. (1) At least 60 days before the effective date of any rate increase proposed by a small telecommunications provider, the small telecommunications provider shall mail notice of the proposed rate increase to each affected subscriber, the commission, and the Montana consumer counsel.

(2) Notice to the commission and consumer counsel must include:

(a) a summary of the justification for the proposed rate increase;

(b) a list of the number of affected subscribers in each category of rates proposed to be increased; and

(c) if requested by the commission, a list of the names of the affected subscribers.

(3) The notice to affected subscribers may be included with regular subscriber billings and must include:

(a) a schedule of the proposed rates;

(b) the effective date of the proposed rates; and

(c) a description of the petition procedure in 69-3-906 for seeking commission review and determination of the proposed rates. If the small telecommunications provider publishes the petition procedure in a telephone directory, a reference to the location of the procedure in the directory is adequate notice.

History: En. Sec. 3, Ch. 254, L. 1987.

69-3-904. Commission review and determination of rate increases. (1) When a small telecommunications provider proposes a rate increase, the commission shall review and determine the rates pursuant to the applicable procedures in this chapter if:

(a) the affected subscribers have successfully petitioned for commission review as described in 69-3-906;

(b) the small telecommunications provider requests the commission to review and determine the rates; or

(c) by the 60th day following notice of the proposed increase, the consumer counsel petitions the commission to review and determine the rates.

(2) An order of the commission issued under this section establishes the effective rate for the regulated telecommunications services covered by the order. Rates established by commission order may not be increased for a period of 6 months, except as ordered by the commission.

(3) The order of the commission is subject to review pursuant to part 4 of this chapter.

History: En. Sec. 4, Ch. 254, L. 1987.

69-3-905. Investigations by commission. Nothing in this part limits the authority of the commission under 69-3-324 to investigate at any time and on its own motion the existing rates of a small telecommunications provider.

History: En. Sec. 5, Ch. 254, L. 1987.

69-3-906. Petition for review of proposed rate increase. Subscribers affected by a proposed rate increase for regulated telecommunications services by a small telecommunications provider may petition the commission to review and determine the rates. The petition must identify the proposed rate increase and must be in writing and signed by a subscriber or the authorized person if the subscriber is a business account.

History: **En. Sec. 6, Ch. 254, L. 1987.**

69-3-907. Proposed increase effective unless requisite petitions received by commission. (1) If by the 60th day following notice to subscribers of a proposed rate increase the commission has not received petitions containing signatures from at least 10% of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall certify this fact to the small telecommunications provider and the proposed rate increase becomes effective as published in the notice of proposed increase.

(2) If by the 60th day following notice to subscribers of a proposed rate increase the commission has received petitions containing signatures from 10% or more of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall notify the small telecommunications provider of this fact and shall indicate that the proposed rate increase in that rate category will not take effect as noticed. The commission shall then review and determine the rates in that category pursuant to 69-3-904.

(3) In the case of a proposed increase in rates for access services provided to interexchange carriers, a valid petition for commission review and determination of rates consists of a signature of an authorized representative of any interexchange carrier that would be affected by the access rates that are proposed to be increased.

History: **En. Sec. 7, Ch. 254, L. 1987.**

Part 10

Telephone Low Income Assistance Program

69-3-1001. Creation of program — amount of assistance. (1) There is a telephone low income assistance program to provide an eligible subscriber with a discount in the monthly charge for local exchange service in the telephone network.

(2) This discount in the charge for local exchange service is the greater of:

(a) $2 a month for each eligible subscriber; or

(b) the amount necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission.

History: **En. Sec. 1, Ch. 391, L. 1987.**

69-3-1002. Eligibility — rules. (1) A residential subscriber with single telephone line service at his principal residence is eligible for low income telephone assistance if he is certified by the department of social and rehabilitation services as a recipient of medicaid benefits.

(2) The department shall periodically certify and verify the eligibility of a subscriber to receive low income telephone assistance.

(3) The department may adopt rules to establish procedures for the certification and verification of eligible subscribers.

History: **En. Sec. 2, Ch. 391, L. 1987.**

69-3-1003. Reimbursement for discounts. (1) The public service commission shall authorize an additional monthly charge for each residential access line to fully reimburse providers of local telecommunications services for discounts given eligible subscribers.

(2) The additional monthly charge for local exchange service applies to residential subscribers of providers of local telecommunications services that participate in the low income telephone assistance program.

(3) Participation of each provider in the low income telephone assistance program must be administered separately by the public service commission.

History: **En. Sec. 3, Ch. 391, L. 1987.**

69-3-1004. Administration — rules. (1) The public service commission shall monitor the effectiveness of the low income telephone assistance program and issue annual reports as provided in 69-3-1005.

(2) The commission may adopt rules necessary to administer and implement the low income telephone assistance program and to receive matching federal low income telephone assistance.

History: **En. Sec. 4, Ch. 391, L. 1987.**

69-3-1005. Annual reports. The commission shall, if necessary, provide the federal communications commission with annual reports containing the following information:

(1) a description of qualification and verification procedures and other assistance measures;

(2) the costs of the low income telephone assistance program;

(3) the number of households receiving low income telephone assistance;

(4) the number of eligible subscribers receiving low income telephone assistance, including subscribers who switched from other telephone services to low income telephone service and new subscribers of low income telephone service; and

(5) all other information requested by the federal communications commission concerning the effect of the low income telephone assistance program on eligible subscribership levels.

History: **En. Sec. 5, Ch. 391, L. 1987.**

69-3-1006. Federal requirements. The public service commission, the department of social and rehabilitation services, and participating providers of local telecommunications services shall comply with federal requirements for the receipt of matching federal low income telephone assistance.

History: **En. Sec. 6, Ch. 391, L. 1987.**

69-3-1007. Applicability — voluntary participation or withdrawal. (1) Sections 69-3-1001 through 69-3-1006 apply to providers of regulated local telecommunications services with more than 50,000 subscribers.

(2) Regulated providers of local telecommunications services with fewer than 50,000 subscribers may petition the public service commission to participate in or withdraw from the low income telephone assistance program. The public service commission shall grant a petition to participate in or withdraw from the low income telephone assistance program unless federal requirements for obtaining matching federal low income telephone assistance require otherwise.

History: En. Sec. 7, Ch. 391, L. 1987.

CHAPTER 4

UTILITY LINES AND FACILITIES

Part 1 — General Provisions

69-4-101. Use of public right-of-way for utility lines and facilities.
69-4-102. Underground power lines in new service areas.

Part 2 — Construction Standards for Utility Lines and Facilities

69-4-201. Application of national electrical safety code.
69-4-202. Repealed.
69-4-203. Scope of law.
69-4-204. Regulation by local government.
69-4-205. Violations.
69-4-206 through 69-4-210 reserved.
69-4-211 through 69-4-241. Repealed.

Part 3 — Underground Conversion of Utilities

69-4-301. Short title.
69-4-302. Statement of findings and purpose.
69-4-303. Definitions.
69-4-304. Exclusion for high voltage transmission lines.
69-4-305. Effect on authority of public service commission.
69-4-306 through 69-4-310 reserved.
69-4-311. Authorization to create special improvement districts.
69-4-312. Procedure to initiate creation of district — resolution for feasibility study.
69-4-313. Cost and feasibility report.
69-4-314. Determination of conversion costs.
69-4-315. Resolution of intent to create district.
69-4-316. Notice of resolution of intention and hearing.
69-4-317. Publication and distribution of notice.
69-4-318. Right to protest.
69-4-319. Hearing on creation of district.
69-4-320. Ordinance creating district.
69-4-321. Waiver of objections.
69-4-322. Proposed assessment list.
69-4-323. Basis of assessments.
69-4-324. Proposed assessment ordinance.
69-4-325. Notice of hearing on proposed assessments.
69-4-326. Hearing on proposed assessment ordinance — adjustment of assessments.
69-4-327. Adoption of assessment ordinance.

69-4-328. Payment of assessment.
69-4-329. Advance payment of assessment installments.
69-4-330. Collection of installments — delinquency.
69-4-331. Assessment lien.
69-4-332. Issuance of bonds.
69-4-333. Challenge to validity of assessments and bonds.
69-4-334 through 69-4-350 reserved.
69-4-351. Maintenance and construction of converted facilities.
69-4-352. Title to converted facilities.
69-4-353. Conversion of facilities on public property — notice to landowners.
69-4-354. Conversion of facilities on private property.
69-4-355. Procedure upon failure to effect conversion on private property.
69-4-356. Payment of public utility.
69-4-357. Prohibition on reinstallation of overhead facilities.
69-4-358. Postponement of conversion until certain actions occur.

Part 4 — Relocation of Overhead Utility Lines

69-4-401. Definitions.
69-4-402. Petition for relocation of overhead line.
69-4-403. Hearing and order.
69-4-404. Costs of relocation.

Part 5 — Excavations Near Underground Facilities

69-4-501. Definitions.
69-4-502. Information to be sought before excavation — notification — exception.
69-4-503. Notification — marking.
69-4-504. Information to be part of architects' and engineers' plans.
69-4-505. Liability for damages to underground facilities.
69-4-506. Exemption for emergency repairs.
69-4-507. Public authority — liability.
69-4-508 through 69-4-510 reserved.
69-4-511. Financial responsibility and liability for water service pipeline.

Part 6 — Movement of Structures

69-4-601. Movement of structures and interference with wires — notice required.
69-4-602. Procedure to give required notice.
69-4-603. Procedure to accomplish move.
69-4-604. Unlawful interference with lines.

Parts 7 through 10 reserved

Part 11 — Liability for Bypassing or Tampering With Meter

69-4-1101. Purpose — remedies cumulative.
69-4-1102. Definitions.
69-4-1103. Liability for bypass or tampering.
69-4-1104. Action for recovery of reasonable value — penalty.

Chapter Cross-References

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Report of property by utilities to Department of Revenue, 15-23-301.

Right-of-way through cemeteries prohibited, 35-21-409.

Montana Telecommunications Act, Title 69, ch. 3, part 8.

Eminent domain — utility lines as public use, 70-30-102.

Permissible easements for utilities, 76-6-203.

Reduction of slash along right-of-way of utility lines, 76-13-407.

Part 1

General Provisions

69-4-101. Use of public right-of-way for utility lines and facilities. A telegraph, telephone, electric light, or electric power line corporation or public body or any other person owning or operating such is hereby authorized to install its respective plants and appliances necessary for service and to supply and distribute electricity for lighting, heating, power, and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric power lines, from point to point, along and upon any of the public roads, streets, and highways in the state, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. The same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways, and nothing herein shall be so construed as to restrict the powers of city or town councils.

History: En. Sec. 1000, Civ. C. 1895; amd. Sec. 1, Ch. 55, L. 1905; amd. Sec. 1, Ch. 192, L. 1907; re-en. Sec. 4400, Rev. C. 1907; re-en. Sec. 6645, R.C.M. 1921; re-en. Sec. 6645, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1945; R.C.M. 1947, 70-301.

Cross-References

Local government provisions not to modify this section, 7-3-4302.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

Eminent domain — utility lines as public use, 70-30-102.

69-4-102. Underground power lines in new service areas. (1) As used in this section:

(a) "new service area" means any subdivision or group of newly constructed or newly installed dwellings (including mobile homes) or commercial buildings which, when occupied, will generate at least five contracts for the supply of electricity; and

(b) "lines used for the distribution of electricity" means all the distribution lines in the new service area through which electricity passes before it is utilized by the consumer and the consumer's dwelling or place of business.

(2) A firm, agency, or person exercising the rights conferred by 69-4-101 shall install underground all lines used for the distribution of electricity in a new service area when technically and economically feasible.

(3) The commission may make rules to implement this section.

History: En. 70-304 by Sec. 1, Ch. 125, L. 1974; R.C.M. 1947, 70-304.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Utility lines and facilities — definitions, 69-4-303, 69-4-401, 69-4-501.

Part 2

Construction Standards for Utility Lines and Facilities

69-4-201. Application of national electrical safety code. The national electrical safety code standards shall govern all future construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state shall be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code shall furnish construction standards and shall be enforced by the public service commission. Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.

History: En. Sec. 25, Ch. 171, L. 1917; re-en. Sec. 2701, R.C.M. 1921; re-en. Sec. 2701, R.C.M. 1935; amd. Sec. 12, Ch. 137, L. 1941; R.C.M. 1947, 24-125; amd. Sec. 1, Ch. 516, L. 1979; amd. Sec. 1, Ch. 471, L. 1989.

Cross-References

Electricians and electrical safety, Title 37, ch. 68.

Building construction standards — electrical installations, Title 50, ch. 60, part 6.

69-4-202. Repealed. Sec. 6, Ch. 516, L. 1979.

History: (1)En. Sec. 1, Ch. 194, L. 1939; amd. Sec. 1, Ch. 139, L. 1951; Sec. 24-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 194, L. 1939; Sec. 24-143, R.C.M. 1947; (3)En. Sec. 3, Ch. 194, L. 1939; Sec. 24-144, R.C.M. 1947; R.C.M. 1947, 24-142, 24-143, 24-144; amd. Sec. 9, Ch. 43, L. 1979.

69-4-203. Scope of law. Section 69-4-201 shall not apply to:

(1) interstate railroad electrification construction except where the wires of the railroad cross or are crossed by wires belonging to others; and

(2) any electrical construction of any person using the construction for power wires where:

(a) the construction and wires and the power plant furnishing electricity therefor are wholly owned by this person and the electricity conducted thereby is produced and used solely by this person on his own premises and not sold or delivered to any other person off his premises;

(b) the wires or construction are not over or across any highway or public place or the property of others; and

(c) these wires have a potential of less than 450 volts between any phases.

History: En. Secs. 16, 18, Ch. 137, L. 1941; R.C.M. 1947, 24-140(part), 24-141; amd. Sec. 2, Ch. 516, L. 1979.

69-4-204. Regulation by local government. All ordinances or parts of ordinances of cities and towns in the state in conflict with the national electrical safety code are repealed. No ordinance in conflict with any provisions of the national electrical safety code may be enacted in any city or town in the state, and any such ordinance is void.

History: En. Sec. 35, Ch. 171, L. 1917; re-en. Sec. 2711, R.C.M. 1921; re-en. Sec. 2711, R.C.M. 1935; R.C.M. 1947, 24-135; amd. Sec. 10, Ch. 43, L. 1979; amd. Sec. 3, Ch. 516, L. 1979.

69-4-205. Violations. Every corporation or joint-stock company or individual which violates 69-4-201 is guilty of a misdemeanor.

History: En. Sec. 33, Ch. 171, L. 1917; re-en. Sec. 2709, R.C.M. 1921; re-en. Sec. 2709, R.C.M. 1935; R.C.M. 1947, 24-133; amd. Sec. 4, Ch. 516, L. 1979.

Cross-References

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Penalty for misdemeanor, 46-18-212.

69-4-206 through 69-4-210 reserved.

69-4-211 through 69-4-241. Repealed. Sec. 6, Ch. 516, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

69-4-211. En. Sec. 1, Ch. 171, L. 1917; re-en. Sec. 2677, R.C.M. 1921; re-en. Sec. 2677, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1941; R.C.M. 1947, 24-101.

69-4-212. En. Sec. 2, Ch. 171, L. 1917; re-en. Sec. 2678, R.C.M. 1921; re-en. Sec. 2678, R.C.M. 1935; amd. Sec. 2, Ch. 137, L. 1941; amd. Sec. 1, Ch. 45, L. 1949; R.C.M. 1947, 24-102.

69-4-213. En. Sec. 3, Ch. 171, L. 1917; re-en. Sec. 2679, R.C.M. 1921; re-en. Sec. 2679, R.C.M. 1935; amd. Sec. 3, Ch. 137, L. 1941; R.C.M. 1947, 24-103.

69-4-214. En. Sec. 4, Ch. 171, L. 1917; re-en. Sec. 2680, R.C.M. 1921; re-en. Sec. 2680, R.C.M. 1935; R.C.M. 1947, 24-104.

69-4-215. En. Sec. 5, Ch. 171, L. 1917; re-en. Sec. 2681, R.C.M. 1921; re-en. Sec. 2681, R.C.M. 1935; amd. Sec. 4, Ch. 137, L. 1941; R.C.M. 1947, 24-105.

69-4-216. En. Sec. 6, Ch. 171, L. 1917; re-en. Sec. 2682, R.C.M. 1921; re-en. Sec. 2682, R.C.M. 1935; amd. Sec. 5, Ch. 137, L. 1941; R.C.M. 1947, 24-106.

69-4-217. En. Sec. 7, Ch. 171, L. 1917; re-en. Sec. 2683, R.C.M. 1921; re-en. Sec. 2683, R.C.M. 1935; amd. Sec. 6, Ch. 137, L. 1941; amd. Sec. 1, Ch. 248, L. 1947; amd. Sec. 1, Ch. 344, L. 1971; R.C.M. 1947, 24-107.

69-4-218. En. Sec. 8, Ch. 171, L. 1917; re-en. Sec. 2684, R.C.M. 1921; re-en. Sec. 2684, R.C.M. 1935; R.C.M. 1947, 24-108.

69-4-219. En. Sec. 9, Ch. 171, L. 1917; re-en. Sec. 2685, R.C.M. 1921; re-en. Sec. 2685, R.C.M. 1935; amd. Sec. 7, Ch. 137, L. 1941; R.C.M. 1947, 24-109.

69-4-220. En. Sec. 10, Ch. 171, L. 1917; re-en. Sec. 2686, R.C.M. 1921; re-en. Sec. 2686, R.C.M. 1935; R.C.M. 1947, 24-110.

69-4-221. En. Sec. 11, Ch. 171, L. 1917; re-en. Sec. 2687, R.C.M. 1921; re-en. Sec. 2687, R.C.M. 1935; R.C.M. 1947, 24-111.

69-4-222. En. Sec. 12, Ch. 171, L. 1917; re-en. Sec. 2688, R.C.M. 1921; re-en. Sec. 2688, R.C.M. 1935; amd. Sec. 8, Ch. 137, L. 1941; R.C.M. 1947, 24-112.

69-4-223. En. Sec. 13, Ch. 171, L. 1917; re-en. Sec. 2689, R.C.M. 1921; re-en. Sec. 2689, R.C.M. 1935; R.C.M. 1947, 24-113.

69-4-224. En. Sec. 14, Ch. 171, L. 1917; re-en. Sec. 2690, R.C.M. 1921; re-en. Sec. 2690, R.C.M. 1935; amd. Sec. 9, Ch. 137, L. 1941; R.C.M. 1947, 24-114.

69-4-225. En. Sec. 15, Ch. 171, L. 1917; re-en. Sec. 2691, R.C.M. 1921; re-en. Sec. 2691, R.C.M. 1935; amd. Sec. 10, Ch. 137, L. 1941; R.C.M. 1947, 24-115.

69-4-226. En. Sec. 16, Ch. 171, L. 1917; re-en. Sec. 2692, R.C.M. 1921; re-en. Sec. 2692, R.C.M. 1935; amd. Sec. 11, Ch. 137, L. 1941; R.C.M. 1947, 24-116.

69-4-227. En. Sec. 17, Ch. 171, L. 1917; re-en. Sec. 2693, R.C.M. 1921; re-en. Sec. 2693, R.C.M. 1935; R.C.M. 1947, 24-117.

69-4-228. En. Sec. 18, Ch. 171, L. 1917; re-en. Sec. 2694, R.C.M. 1921; re-en. Sec. 2694, R.C.M. 1935; R.C.M. 1947, 24-118.

69-4-229. En. Sec. 19, Ch. 171, L. 1917; re-en. Sec. 2695, R.C.M. 1921; re-en. Sec. 2695, R.C.M. 1935; R.C.M. 1947, 24-119.

69-4-230. En. Sec. 20, Ch. 171, L. 1917; re-en. Sec. 2696, R.C.M. 1921; re-en. Sec. 2696, R.C.M. 1935; R.C.M. 1947, 24-120.

69-4-231. En. Sec. 21, Ch. 171, L. 1917; re-en. Sec. 2697, R.C.M. 1921; re-en. Sec. 2697, R.C.M. 1935; R.C.M. 1947, 24-121.

69-4-232. En. Sec. 22, Ch. 171, L. 1917; re-en. Sec. 2698, R.C.M. 1921; re-en. Sec. 2698, R.C.M. 1935; R.C.M. 1947, 24-122.

69-4-233. En. Sec. 23, Ch. 171, L. 1917; re-en. Sec. 2699, R.C.M. 1921; re-en. Sec. 2699, R.C.M. 1935; R.C.M. 1947, 24-123.

69-4-234. En. Sec. 24, Ch. 171, L. 1917; re-en. Sec. 2700, R.C.M. 1921; re-en. Sec. 2700, R.C.M. 1935; R.C.M. 1947, 24-124.

69-4-235. En. Sec. 26, Ch. 171, L. 1917; re-en. Sec. 2702, R.C.M. 1921; re-en. Sec. 2702, R.C.M. 1935; amd. Sec. 13, Ch. 137, L. 1941; amd. Sec. 2, Ch. 248, L. 1947; amd. Sec. 2, Ch. 45, L. 1949; R.C.M. 1947, 24-126.

69-4-236. En. Sec. 27, Ch. 171, L. 1917; re-en. Sec. 2703, R.C.M. 1921; re-en. Sec. 2703, R.C.M. 1935; R.C.M. 1947, 24-127.

69-4-237. En. Sec. 28, Ch. 171, L. 1917; re-en. Sec. 2704, R.C.M. 1921; re-en. Sec. 2704, R.C.M. 1935; R.C.M. 1947, 24-128.

69-4-238. En. Sec. 29, Ch. 171, L. 1917; re-en. Sec. 2705, R.C.M. 1921; re-en. Sec. 2705, R.C.M. 1935; R.C.M. 1947, 24-129.

69-4-239. En. Sec. 30, Ch. 171, L. 1917; re-en. Sec. 2706, R.C.M. 1921; re-en. Sec. 2706, R.C.M. 1935; R.C.M. 1947, 24-130.

69-4-240. En. Sec. 31, Ch. 171, L. 1917; re-en. Sec. 2707, R.C.M. 1921; re-en. Sec. 2707, R.C.M. 1935; R.C.M. 1947, 24-131.

69-4-241. En. Sec. 32, Ch. 171, L. 1917; re-en. Sec. 2708, R.C.M. 1921; re-en. Sec. 2708, R.C.M. 1935; R.C.M. 1947, 24-132.

Part 3

Underground Conversion of Utilities

Part Cross-References

Where wires may run — special improvement districts, 7-12-4102.

Power to require placement of utilities underground, 7-12-4132.

Permissible easements for utilities, 76-6-203.

69-4-301. Short title. This part shall be known and cited as the "Underground Conversion of Utilities Law".

History: En. Sec. 1, Ch. 429, L. 1971; R.C.M. 1947, 70-601.

69-4-302. Statement of findings and purpose. (1) The legislature finds that in many areas of the state, landowners, cities, towns, counties, rural electric cooperatives, and public utilities desire to convert existing overhead electric and communication facilities to underground locations by means of special improvement district proceedings.

(2) The legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this part, whether such areas be within the limits of a city or town or within a county.

History: En. Sec. 2, Ch. 429, L. 1971; R.C.M. 1947, 70-602.

Cross-References

Special improvement districts, Title 7, ch. 12, parts 21 and 41.

69-4-303. Definitions. As used in this part, the following words and phrases and any variations thereof shall have the following meaning:

(1) "Communication service" means the transmission of intelligence by electrical means, including but not limited to telephone, telegraph, messenger-call, clock, police, fire alarm, and traffic control circuits or the transmission of standard television or radio signals.

(2) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(3) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments, and appurtenances.

(4) "Electrical service" means the distribution of electricity for heat, light, or power.

(5) "Governing body" means the board of county commissioners or city council, as may be appropriate, depending on whether the special improvement district is located in a county or within a city or town.

(6) "Ordinance" means resolution where the governing body acts by resolution and vice versa.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Public utility" means any public or private person, corporation, or cooperative that provides electric or communication service to the public by means of electric or communication facilities and shall include any special improvement district that provides electric or communication service to the public by means of electric or communication facilities.

(9) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

Cross-References

Alternative forms of local government, Title 7, ch. 3.

Utility lines and facilities — definitions, 69-4-401, 69-4-501.

69-4-304. Exclusion for high voltage transmission lines. Electric facilities shall not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 25,000 volts.

History: En. Sec. 3, Ch. 429, L. 1971; R.C.M. 1947, 70-603(part).

69-4-305. Effect on authority of public service commission. Nothing contained in this part shall vest any jurisdiction over any public utility in the governing body. The public service commission shall retain all jurisdiction now or hereafter conferred upon it by law.

History: En. Sec. 33, Ch. 429, L. 1971; R.C.M. 1947, 70-633; amd. Sec. 11, Ch. 43, L. 1979.

69-4-306 through 69-4-310 reserved.

69-4-311. Authorization to create special improvement districts. (1) The governing body of every county is hereby authorized and empowered to create special improvement districts under this part within the unincorporated portion of such county. The governing body of every city and town is hereby authorized and empowered to create special improvement districts under this part within its territorial limits. Said special improvement districts shall provide for the conversion of existing overhead electrical and communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this part.

(2) Any such special improvement district shall include an area having a frontage of not less than 1,000 feet upon a public street, road, highway, or utilities easement along which overhead electric or communication facilities are located.

History: **En. Sec. 4, Ch. 429, L. 1971; R.C.M. 1947, 70-604.**

Cross-References

Special improvement districts, Title 7, ch. 12, parts 21 and 41.

69-4-312. Procedure to initiate creation of district — resolution for feasibility study. (1) Any governing body, on its own initiative or upon a petition signed by at least 60% of the property owners owning at least 60% of the assessable land of any proposed district requesting the creation of a special improvement district, as provided for in this part, may pass a resolution at any regular or special meeting, declaring that it finds that the special improvement district is in the public interest. The governing body shall make a finding that the formation of the special improvement district, for the purposes set out in this part, will promote the public convenience, necessity, and welfare.

(2) The resolution shall state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving such area by overhead electric or communication facilities shall, within 120 days after the receipt of the resolution, make a study of the cost of conversion of its facilities in such area to underground service. The report of said study shall be provided to the governing body and made available for inspection in the office of the governing body and each public utility. The resolution of the governing body shall require that each public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and such other matters as may be required by the public utilities in order to perform the work involved in the cost study. The resolution shall further state the area in square feet of each lot or parcel within the proposed conversion service area.

History: **En. Sec. 6, Ch. 429, L. 1971; R.C.M. 1947, 70-606.**

69-4-313. Cost and feasibility report. (1) The public utility report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility's recommendations concerning the feasibility of the project for the district proposed, insofar as the physical characteristics of the district are concerned. The report shall make recommendations by the public utility concerning inclusion or exclusion of areas within the district or immediately adjacent to the district.

(2) The governing body shall give careful consideration to the public utility's recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district; provided, that the costs and feasibility report of the public utility contains a cost figure on the district as amended, or it may request a new cost and feasibility report from the public utility concerned on the basis of the amended district. Should a delay result in a significant increase of the estimated conversion costs, new hearings shall be held on the creation of the district. In the event an increase of 10% or less results from delay, only the hearing on the assessments need be held again.

History: En. Sec. 7, Ch. 429, L. 1971; R.C.M. 1947, 70-607.

69-4-314. Determination of conversion costs. In determining the conversion costs included in the cost and feasibility report required by 69-4-313, the public utility is entitled to amounts sufficient to repay it for the following, as computed and reflected by the uniform system of accounts approved by the Montana public service commission, federal communications commission, or federal power commission or if the public utility is not subject to regulation by any of the above governmental agencies, by the public utility's system of accounts then in use and in accordance with standard accounting procedures of the public utility:

(1) the original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(2) the estimated costs of removing the overhead electric and communication facilities less the salvage value of the facilities removed;

(3) if the estimated cost of constructing new underground facilities exceeds the estimated cost of constructing new aerial facilities, then the cost difference between the two;

(4) the cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for above ground facilities or where the preexisting easements are insufficient for the underground facilities.

History: En. Sec. 26, Ch. 429, L. 1971; amd. Sec. 8, Ch. 315, L. 1974; R.C.M. 1947, 70-626.

69-4-315. Resolution of intent to create district. (1) On the filing with the clerk of any governing body of the cost and feasibility report by the public utility, as hereinbefore provided, and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a special improvement district.

(2) The resolution shall state:

(a) that the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made and upon lots and lands benefited by such improvements and included in the special improvement district created;

(b) that it is the intention of the governing body to make such improvement which will promote public convenience, necessity, and welfare; and

(c) the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold a hearing on the proposed improvement.

History: En. Sec. 8, Ch. 429, L. 1971; R.C.M. 1947, 70-608.

69-4-316. Notice of resolution of intention and hearing. (1) Following the passage of the resolution in 69-4-315, the governing body shall cause notice of the resolution and a hearing on any protests to the proposed improvement to be given in the manner provided in 69-4-317.

(2) Such notice shall:

(a) declare that the governing body has passed a resolution of intention to create a special improvement district;

(b) describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district;

(c) describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(d) state the estimated cost as determined from the cost and feasibility report and the estimated cost of engineering, clerical service, easements, advertising, inspection, collection of assessments, interest upon bonds, and legal services for preparing proceedings and advising in regard thereto, if applicable;

(e) state that it is proposed to assess the real property in the district to pay all of the cost of the improvement according to the square footage of and the benefits to be derived by each tract, block, lot, and parcel of land within the district;

(f) state the time and place at which the governing body will hear and pass upon all protests that may be made against the making of such improvements or the creation of such district or the benefits to be derived by the real property in the district;

(g) state that all property owners liable to be assessed for such work and desiring to make a protest may submit, in writing, such protest to the governing body by a specified date, not less than 15 days from the first day of publication of such notice.

History: En. Sec. 9, Ch. 429, L. 1971; R.C.M. 1947, 70-609.

69-4-317. Publication and distribution of notice. (1) Notice shall be published in full five times in a daily newspaper or once in a weekly newspaper of general circulation in the county, city, or town in which said district is located. A copy of such notice shall be mailed by the governing body to each owner and purchaser under contract for deed of land within the proposed district whose property will be assessed for the cost of the improvement. The address to be used for said purpose shall be that last appearing on the real property assessment rolls of the county wherein said property is located.

(2) Mailed notices and the published notice shall state where a copy of the resolution will be available for inspection by any interested parties.

History: En. Sec. 10, Ch. 429, L. 1971; R.C.M. 1947, 70-610; amd. Sec. 17, Ch. 526, L. 1983.

69-4-318. Right to protest. (1) At any time within the time specified in the notice, any owner of property liable to be assessed for said work may make written protest against the making of such improvements, the creation of such district, or the benefits to be derived by the real property in the district. Protests in writing must be delivered to the clerk of the governing body not later than 5 p.m. of the last day within said period, and said clerk shall endorse thereon the date and hour of its receipt by him.

(2) If the protests against the making of the improvement are received from more than 40% of the property owners owning more than 40% of the property in the proposed special improvement district, the district and project shall be abandoned. The same or any substantially similar special improvement district may not be renewed at any time within 1 year. In determining whether or not sufficient protests have been filed to prevent further proceedings, property owned by a county, city, or town shall be considered to the same effect as other property in the district.

History: (1)En. Sec. 11, Ch. 429, L. 1971; Sec. 70-611, R.C.M. 1947; (2)En. Sec. 12, Ch. 429, L. 1971; Sec. 70-612, R.C.M. 1947; R.C.M. 1947, 70-611, 70-612(part).

69-4-319. Hearing on creation of district. (1) At the time and place specified in the notice, the governing body shall meet and shall proceed to hear and pass upon all protests. Such hearing may be adjourned from time to time to a fixed future time and place. If at any time during the hearings it shall appear to the governing body that changes in the proposed improvements or the proposed district should be made which, after consultation with the public utility concerned, appear to affect either the cost or feasibility of the improvement, the hearing shall be adjourned to a fixed future time and place and a new cost and feasibility report prepared on the basis of the contemplated changes. If additional areas are added, notice and an opportunity to protest shall again be given on the basis of such changes.

(2) The governing body shall, after considering matters brought forth at the hearing, either abandon the district and project or adopt an ordinance establishing the district and authorizing the project.

History: En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).

69-4-320. Ordinance creating district. (1) The ordinance authorized by 69-4-319 shall be published in the manner provided in 69-4-317, but need not be mailed.

(2) If an ordinance is adopted establishing the district, such ordinance shall finally and conclusively establish the regular organization of the district against all persons, unless an action attacking the validity of the organization shall be commenced in a court of competent jurisdiction within 30 days after the adoption of such ordinance. Such action shall be subject to the provisions of 69-4-321. Thereafter, any such action shall be perpetually barred, and the organization of said district shall not be directly or collaterally questioned in any suit, action, or proceedings.

History: En. Sec. 12, Ch. 429, L. 1971; R.C.M. 1947, 70-612(part).

69-4-321. Waiver of objections. Every person who has real property within the boundaries of the district and who fails to submit a written protest in accordance with 69-4-318 or appear and give testimony at the public hearing shall be deemed to have waived any objections to the creation of the district, the making of the improvements, and the inclusion of his property within the district. Such waiver shall not, however, preclude his right to object to the amount of the assessment at the hearing for which provision is made in 69-4-326.

History: **En. Sec. 13, Ch. 429, L. 1971; R.C.M. 1947, 70-613.**

69-4-322. Proposed assessment list. Following creation of the special improvement district, the governing body shall cause to be prepared an assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

History: **En. Sec. 14, Ch. 429, L. 1971; R.C.M. 1947, 70-614.**

Cross-References

Assessment procedure, Title 15, ch. 8.

69-4-323. Basis of assessments. (1) Whenever any improvement authorized to be made by any governing body by the terms of this part is ordered, the governing body shall provide for the apportionment of the cost and expenses thereof as in their judgment may be fair and equitable in consideration of the benefits accruing to the abutting, adjoining, contiguous, and adjacent lots and land and to the lots and land otherwise benefited and included within the special improvement district formed. Each lot and parcel of the land shall be separately assessed for the cost and expenses thereof in proportion to the number of square feet of such land and lots abutting, adjoining, contiguous, and adjacent thereto or included in the special improvement district and in proportion to the benefits derived to such property by said improvements.

(2) The entire cost of the improvement may be assessed against the benefited property, as herein provided, or if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefited property. The cost and expenses to be assessed, as herein provided for, shall include the cost of the improvement, engineering and clerical service, advertising, cost of inspection, cost of collecting assessments, cost of easements, and interest upon bonds, if issued, and for legal services for preparing proceedings and advising in regard thereto.

(3) Fee lands and property of the state or federal government shall not be considered as lands or property benefited by any improvement district and shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

History: **En. Sec. 5, Ch. 429, L. 1971; R.C.M. 1947, 70-605.**

Cross-References

Assessment procedure, Title 15, ch. 8.

69-4-324. Proposed assessment ordinance. After the preparation of the proposed assessment list, the governing body shall cause to be prepared, for adoption at the hearing hereinafter provided for, an ordinance declaring the entire cost of the improvement, including the cost of construction as determined from 69-4-314, all legal and fiscal fees and costs, the cost of the publication of notices, and all other costs properly incident to the construction of the improvement and the financing thereof. Such ordinance shall specify what share, if any, of the total cost is payable from sources other than the imposition of assessments and shall incorporate the proposed assessment list provided for in 69-4-322. Such ordinance shall specify the terms of installment payments, if said improvement is to be financed over a period of time.

History: **En. Sec. 15, Ch. 429, L. 1971; R.C.M. 1947, 70-615.**

Cross-References

Assessment procedure, Title 15, ch. 8.

69-4-325. Notice of hearing on proposed assessments. (1) After the preparation of the ordinance provided for in 69-4-324, notice of a public hearing on the proposed assessments shall be given.

(2) Such notice shall be published one time in a newspaper in which the first notice of hearing was published at least 20 days before the date fixed for the hearing and shall be mailed by the governing body not less than 15 days prior to the date fixed for such hearing to each owner and purchaser under contract for deed of real property whose property will be assessed for part of the cost of the improvement at the addresses appearing on the last completed real property assessment rolls of the county wherein said affected property is located.

(3) (a) Each notice shall state that at the specified time and place, the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the ordinance will be heard on the question of whether his property will be benefited by the proposed improvement to the amount of the proposed assessment against his property and whether the amount assessed against his property constitutes more than his proper proportional share of the total cost of the improvement.

(b) The notice shall further state where a copy of the ordinance proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection and that, subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the ordinance at the conclusion of the hearing.

(c) The published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that his property lies in the district. The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed and the terms of installment financing, if any. In the absence of fraud, the failure to mail any notice does not invalidate any assessment or any proceeding under this part.

History: **En. Sec. 16, Ch. 429, L. 1971; R.C.M. 1947, 70-616; amd. Sec. 18, Ch. 526, L. 1983.**

Cross-References

Notice to purchaser of property under contract for deed, 70-20-115.

69-4-326. Hearing on proposed assessment ordinance — adjustment of assessments. (1) On the date and at the time and place specified in the aforementioned notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot, or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot, or parcel. The hearing may be adjourned from time to time to a fixed future time and place.

(2) After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, increase, or decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard. After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

History: En. Sec. 17, Ch. 429, L. 1971; R.C.M. 1947, 70-617.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-4-327. Adoption of assessment ordinance. After the public hearing has been concluded and all corrections made to the assessment list, the governing body shall proceed to adopt the assessment ordinance. The adoption of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments and that such assessments have been lawfully levied.

History: En. Sec. 18, Ch. 429, L. 1971; R.C.M. 1947, 70-618.

Cross-References

Local government ordinances, Title 7, ch. 5, part 1.

69-4-328. Payment of assessment. (1) All assessments shall be due and payable within 30 days after the final publication of the assessing ordinance, without demand; provided, that all such assessments may be paid, at the election of the owner, in installments, with interest, as provided in subsection (2).

(2) Failure to pay the whole assessment within said period of 30 days shall be conclusively considered and held to be an election on the part of all persons interested, whether under disability or otherwise, to pay in installments. In case of such election, the assessment shall be payable at such times as is provided by the governing body, not to exceed 20 years, and shall bear interest in all cases on the unpaid principal at the rate not exceeding 8% per annum. The number of installments, the time of payments, and the rate of interest

shall be determined by the governing body and set forth in the assessing ordinance.

History: **(1)En. Sec. 19, Ch. 429, L. 1971; Sec. 70-619, R.C.M. 1947; (2)En. Sec. 20, Ch. 429, L. 1971; Sec. 70-620, R.C.M. 1947; R.C.M. 1947, 70-619, 70-620.**

69-4-329. Advance payment of assessment installments. (1) The governing body may, in the ordinance levying the assessments, provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due, if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments. In addition, the property owner must pay such additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds, as interest becomes due, and any redemption premiums which may become payable on the bonds in order to retire, in advance of maturity, bonds in a sufficient amount to utilize the assessments thus paid in advance.

(2) If no bonds have been issued, then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

History: **En. Sec. 23, Ch. 429, L. 1971; R.C.M. 1947, 70-623.**

69-4-330. Collection of installments — delinquency. Installments shall be collected in the manner and at the time prescribed. When one payment becomes delinquent, all payments shall, at the option of the governing body by appropriate and duly adopted resolutions, become delinquent. Delinquent installments shall be subject to the same interest and penalties as are now or hereafter provided for delinquent taxes by the laws of the state, and property subject to delinquent installments shall be sold as other property is sold for taxes.

History: **En. Sec. 21, Ch. 429, L. 1971; R.C.M. 1947, 70-621.**

Cross-References

Reporting delinquent taxes, Title 15, ch. 16, part 3.

69-4-331. Assessment lien. All assessments made in pursuance of this part, together with all interest thereon and penalties for default in payment thereof and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing ordinance, a lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens excepting general tax liens. No sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had.

History: **En. Sec. 22, Ch. 429, L. 1971; R.C.M. 1947, 70-622.**

Cross-References

Tax liens and limitations, Title 15, ch. 16, part 4.

Liens in general, Title 71, ch. 3.

69-4-332. Issuance of bonds. (1) After the expiration of 30 days from the date of the adoption of the ordinance levying the assessments, the governing body may issue negotiable, interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. Whenever any ordinance authorizing the issuance of any bonds pursuant to the improvement contemplated shall have been adopted, such ordinance shall be published once in a newspaper in which the original notice of hearing was published.

(2) The bonds shall bear interest as provided in 17-5-102, payable as specified by the governing body over a period not exceeding 20 years. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place and shall be sold, authorized, and issued in such manner as the governing body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest and shall be secured by and payable from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds, or if not so applied, the same shall be placed in the fund for the payment of principal of and interest on the bonds.

(3) The bonds shall be signed by a member of the governing body designated by the governing body and shall be countersigned by the appropriate treasurer, with the corporate seal thereto affixed as appropriate, and attested to by the clerk of the governing body. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond.

History: En. Secs. 24, 25, Ch. 429, L. 1971; R.C.M. 1947, 70-624, 70-625(part); amd. Sec. 16, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 129, Ch. 370, L. 1987.

Cross-References

Public bond issues, Title 17, ch. 5.

69-4-333. Challenge to validity of assessments and bonds. (1) No special assessment levied under this part shall be declared void, nor shall any such assessment or part thereof be set aside in consequence of any error or irregularity permitted or appearing in any of the proceedings under this part, but any party feeling aggrieved by any such special assessment or proceeding may bring a civil action to cause such grievance to be adjudicated if such action is commenced prior to the expiration of the period specified in this section. The burden of proof to show that such special assessment or part thereof is invalid, inequitable, or unjust shall rest upon the party who brings such suit. Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessments to raise his objection to such tax shall be deemed to have waived all objections to such levy, except the objection that the governing body lacks jurisdiction to levy such tax.

(2) For a period of 30 days after the governing body has adopted the assessment ordinance, any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the proceedings pursuant to which the assessments have been authorized.

(3) For a period of 30 days after publication of the bond ordinance, as provided for in 69-4-332(1), any person whose property shall have been assessed and any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the legality of such bonds.

(4) After the expiration of such 30-day period, all proceedings theretofore had by the governing body, the bonds to be issued pursuant thereto, and the special assessments from which such bonds are to be paid shall become incontestable, no suit attacking or questioning the legality thereof may be instituted in this state, and no court shall have the authority to inquire into such matters.

History: En. Sec. 25, Ch. 429, L. 1971; R.C.M. 1947, 70-625(part).

69-4-334 through 69-4-350 reserved.

69-4-351. Maintenance and construction of converted facilities. The public utility shall have the duty to maintain, repair, and replace all underground facilities installed pursuant to this part. There shall be no competitive bidding as to the construction of the converted facilities since existing facilities are owned, maintained, and operated by the public utility and the continuity of service of the utility is essential, both of which make construction work by third persons impracticable. Therefore, the public utility concerned shall be responsible for the accomplishment of all construction work and may contract out such of the construction work as it deems desirable.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-352. Title to converted facilities. Title to the converted facilities shall be at all times solely and exclusively in the public utility involved, as the public is only purchasing the intangible benefits which come from converted facilities; that is, the removal of the overhead facilities and replacement by underground facilities.

History: En. Sec. 27, Ch. 429, L. 1971; R.C.M. 1947, 70-627(part).

69-4-353. Conversion of facilities on public property — notice to landowners. (1) Upon completion of the conversion of the overhead electric or communication facilities on public lands and right-of-way to underground, the public utility shall file a verified statement of the costs of such conversion with the governing body.

(2) The governing body shall mail to each landowner and purchaser of property under contract for deed a notice stating that:

(a) service from the underground facilities is available;

(b) the landowner has 60 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and

(c) after the 60-day period following the date of the mailing of the notice, the governing body will order the public utility to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area.

History: En. Sec. 28, Ch. 429, L. 1971; R.C.M. 1947, 70-628; amd. Sec. 19, Ch. 526, L. 1983.

Cross-References

Notice to purchaser of property under contract for deed, 70-20-115.

69-4-354. Conversion of facilities on private property. (1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made, at the expense of the landowner, by the public utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs, or ordinances. The public utility shall not be required to convert service lines on property, other than public lands and right-of-way, until the landowner furnishes to the public utility a permit or easement authorizing the public utility and its employees, agents, and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the public utility shall file with the governing body a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter, the governing body shall mail to each landowner a copy of such verified statement, which shall be due and payable within 30 days or as otherwise provided by the public utility.

History: En. Sec. 29, Ch. 429, L. 1971; R.C.M. 1947, 70-629.

Cross-References

Easements, Title 70, ch. 17, part 1.

69-4-355. Procedure upon failure to effect conversion on private property. If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the utility a permit or easement referred to in 69-4-354 or if such an owner fails to convert to underground service facilities within 60 days after the mailing to him of the notice provided by 69-4-353, the governing body shall order the public utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement.

History: En. Sec. 30, Ch. 429, L. 1971; R.C.M. 1947, 70-630.

69-4-356. Payment of public utility. (1) Upon completion of the conversion contemplated by this part, the public utility shall present the governing body with its verified bill for conversion costs as computed pursuant to 69-4-314, but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In the event the conversion costs are less than the estimated conversion costs, each assessed owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility shall be paid within 30 days by the governing body from the improvement district funds or such other source as is properly designated by the governing body.

(2) In determining the actual cost of constructing the underground facility, the public utility shall use its standard accounting procedures, such as the uniform system of accounts as defined by the federal communications commission, federal power commission, or Montana public service commission and as is in use at the time of the conversion by the public utility involved.
History: En. Sec. 31, Ch. 429, L. 1971; R.C.M. 1947, 70-631.

69-4-357. Prohibition on reinstallation of overhead facilities. Once removed, no overhead electric or communication facilities shall be installed in a special improvement district for conversion of overhead electric and communication facilities, except as authorized by this part.
History: En. Sec. 32, Ch. 429, L. 1971; R.C.M. 1947, 70-632.

69-4-358. Postponement of conversion until certain actions occur. If a special improvement district is established pursuant to this part, the public utility involved shall not be required to commence conversion until the ordinance, the assessment roll, and the issuance of bonds have become final and until no civil action has been filed or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.
History: En. Sec. 35, Ch. 429, L. 1971; R.C.M. 1947, 70-635.

Part 4

Relocation of Overhead Utility Lines

Part Cross-References
Relocation of utilities' facilities, 60-4-402.
Eminent domain — public uses enumerated, 70-30-102.

69-4-401. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural improvement" includes, without limitation, sprinkler irrigation systems.

(2) "Overhead utility line" means a facility for the transmission or distribution of electricity or telephone messages along wires or cables suspended above the ground between single or double poles and their respective anchors.
History: En. 24-201 by Sec. 1, Ch. 123, L. 1975; R.C.M. 1947, 24-201.

Cross-References
Utility lines and facilities — definitions, 69-4-303, 69-4-501.

69-4-402. Petition for relocation of overhead line. An owner of agricultural land across which an overhead utility line has been constructed may petition the district court for an order for relocation of the line for the purpose of installing an agricultural improvement. The petition shall set forth the nature of the proposed agricultural improvement, the increase in productivity of the land anticipated to result from the improvement, and a feasible alternative route, across other land to be provided by the petitioner at no cost to the owner of the overhead utility line.

History: **En. 24-202 by Sec. 2, Ch. 123, L. 1975; R.C.M. 1947, 24-202.**

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

69-4-403. Hearing and order. The district court shall, upon notice to the owner of the overhead utility line, hear evidence bearing upon the matters presented in the petition. If the evidence establishes a substantial improvement in agricultural productivity and the feasibility of the relocated route, the court shall grant or modify and grant, as modified, the petition and order the owner of the line to relocate the line.

History: **En. 24-203 by Sec. 3, Ch. 123, L. 1975; R.C.M. 1947, 24-203.**

69-4-404. Costs of relocation. The costs of relocating an overhead utility line as ordered under 69-4-403 shall be paid 50% by the utility and 50% by the owner of the land. However, if the person petitioning for the order fails for any reason to install the agricultural improvement within 2 years following the date relocation is completed, he must reimburse the owner of the line the full cost of relocation, and the court has continuing jurisdiction over the parties for the purpose of ordering such reimbursement.

History: **En. 24-204 by Sec. 4, Ch. 123, L. 1975; R.C.M. 1947, 24-204.**

Part 5

Excavations Near Underground Facilities

69-4-501. Definitions. The following definitions shall apply to this part:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Emergency" means:

(a) any condition that constitutes a clear and present danger to life or property; or

(b) a customer outage.

(3) "Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing and driving. Excavation does not include surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.

(4) "Identified but unlocatable underground facility" means an underground facility that has been identified but cannot be located with reasonable accuracy.

(5) "Locatable underground facility" means an underground facility that can be field-marked with reasonable accuracy.

(6) "Mark" means the use of stakes, paint, or other clearly identifiable material to show the field location, or absence, of underground facilities, in accordance with the current color code standard of the American public works association. Marking must include identification letters indicating the specific type of underground facility, and the width of the facility if it is greater than 6 inches.

(7) "One-call notification center" means a service through which a person may request a marking of underground facilities.

(8) "Person" means an individual, partnership, firm, joint venture, corporation, association, municipality, governmental unit, department, or agency, and includes any trustee, receiver, assignee, or a personal representative thereof.

(9) "Reasonably accurate" means location within 18 inches of the outside lateral dimensions of both sides of an underground facility.

(10) "Underground facility" means any facility buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, fiber optics, electric energy, oil, gas, or other substances. The term includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to the listed items.

History: En. Sec. 1, Ch. 180, L. 1971; R.C.M. 1947, 32-4801; amd. Sec. 1, Ch. 286, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definitions of business day, emergency, identified but unlocatable underground facility, locatable underground facility, mark, one-call notification center, and reasonably accurate; substituted definition of excavation for former definition that read: ""Excavation" shall mean and include any ditch, trench, cut, hole, or change in grade"; in definition of person, after "partnership", inserted "firm", after "corporation" inserted "association, municipality, governmental unit, department, or agency", and after "includes" substituted "any trustee, receiver, assignee, or a personal representative thereof" for "the employer of an individual"; in definition of underground facility, near beginning, substituted "facility" for "item of personal property" and after "communications" inserted "cablevision, fiber optics"; and made minor changes in style.

Cross-References

Utility lines and facilities — definitions, 69-4-303, 69-4-401.

69-4-502. Information to be sought before excavation — notification — exception. (1) No person shall make or begin any excavation in any public street, alley, right-of-way dedicated to the public use, or utility easement without first obtaining information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury such underground facilities within the public street, alley, right-of-way, or utility easement.

(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained unless a one-call notification center is available.

(3) (a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection (3)(a) does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities are located in a public street, alley, or right-of-way dedicated to the public use.

History: **(1)En. Sec. 2, Ch. 180, L. 1971; Sec. 32-4802, R.C.M. 1947; (2)En. Sec. 3, Ch. 180, L. 1971; Sec. 32-4803, R.C.M. 1947; R.C.M. 1947, 32-4802, 32-4803(part); amd. Sec. 2, Ch. 286, L. 1991.**

Compiler's Comments

1991 Amendment: At end of (2) inserted "unless a one-call notification center is available"; and inserted (3) requiring one-call notification center membership and providing an exception.

Cross-References

County Clerk and Recorder, Title 7, ch. 4, part 26.

69-4-503. Notification — marking. (1) At least 2 but not more than 10 business days before beginning any excavation, the excavator shall notify, through a one-call notification center, all owners of underground facilities in the area of the proposed excavation of the scheduled commencement of the excavation. If a one-call notification center service is not available, notice must be provided individually to the owners of underground facilities within the area of the proposed excavation.

(2) Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to the owner's locatable underground facilities by surface marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of the facilities shall provide the excavator with the best available information as to their locations. Excavators may not excavate until all known facilities have been marked. Once the facilities are marked by the facility owner, the excavator is responsible for maintaining the markings.

(3) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by marking the facility. An excavator may not begin excavating before the marking is complete or before he is notified that marking is unnecessary.

(4) A facility owner may request the excavator to mark the area to be excavated. If an excavator discovers an unmarked underground facility, the excavator shall stop excavating in the vicinity of the facility and notify the facility owner or the one-call notification center.

History: **En. Sec. 3, Ch. 180, L. 1971; R.C.M. 1947, 32-4803(part); amd. Sec. 1, Ch. 43, L. 1983; amd. Sec. 3, Ch. 286, L. 1991.**

Compiler's Comments

1991 Amendment: Substituted (1) regarding notification for former (1) that read: "(1) Any person seeking information concerning the location of any underground facility must do so by request in person, in writing, or by telephone"; and substituted (2) through (4) relating to marking and notification for former (2) that read: "(2) The person from whom such information is sought must record the nature and the date of the request and advise the person seeking the information of the location of any underground facility in writing, if so requested, or by marking the location with stakes or paint or by other clearly identifiable markings. The person providing the information must respond no later than the end of the normal business hours of the second full business day following the date of receipt of the request, Saturdays, Sundays, and holidays excluded".

69-4-504. Information to be part of architects' and engineers' plans. (1) Architects and engineers designing projects requiring excavation in or adjacent to any public street, alley, or right-of-way dedicated to public use or utility easement shall obtain information from the owners of underground facilities and then make the information a part of the plan by which the contractors operate. The owners of the underground facilities shall provide substantially the same information as required by 69-4-503.

(2) Nothing in this section shall excuse any person from the obligation imposed by 69-4-502(1).

History: En. Sec. 8, Ch. 180, L. 1971; R.C.M. 1947, 32-4808; amd. Sec. 2, Ch. 43, L. 1983; amd. Sec. 4, Ch. 286, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted second sentence requiring provision of information by owners of underground facilities; and made minor change in style.

Cross-References

Architecture, Title 37, ch. 65.
Engineers, Title 37, ch. 67.

69-4-505. Liability for damages to underground facilities. (1) If any underground facility is damaged by any person who has failed to obtain information as to its location as provided in 69-4-503, then such person shall be liable to the owner of the underground facility for the entire cost of the repair of such facility.

(2) If information requested pursuant to 69-4-503 is not provided within the time specified therein, any person damaging or injuring underground facilities shall not be liable for such damage or injury, unless caused by his negligence.

(3) The act of obtaining information as required by this part shall not excuse any person making any excavation from doing so in a careful and prudent manner, nor shall it excuse such person from liability for any damage or injury resulting from his negligence.

History: (1)En. Sec. 4, Ch. 180, L. 1971; Sec. 32-4804, R.C.M. 1947; (2)En. Sec. 5, Ch. 180, L. 1971; Sec. 32-4805, R.C.M. 1947; (3)En. Sec. 6, Ch. 180, L. 1971; Sec. 32-4806, R.C.M. 1947; R.C.M. 1947, 32-4804, 32-4805, 32-4806.

Cross-References

Damages, Title 27, ch. 1, part 2.
Liability, Title 27, ch. 1, part 7.

69-4-506. Exemption for emergency repairs. The provisions of this part shall not apply to any person making repairs to an underground facility or repairs to the streets or alleys themselves in a situation of emergency when such repairs must be made within a shorter period of time than that provided for in 69-4-503; provided, however, that this exemption from obtaining information shall not excuse the person making the repairs from any liability for damages caused by his negligence.

History: En. Sec. 7, Ch. 180, L. 1971; R.C.M. 1947, 32-4807.

Cross-References

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

69-4-507. Public authority — liability. A public authority, as defined in 18-1-201, that has jurisdiction over a right-of-way is not liable for improper or unauthorized installations made by persons or entities other than the public authority or those acting at its discretion.

History: En. Sec. 5, Ch. 286, L. 1991.

69-4-508 through 69-4-510 reserved.

69-4-511. Financial responsibility and liability for water service pipeline. (1) A property owner is responsible for the costs of constructing privately supplied water service pipelines from the main to his premises and for maintaining service pipelines from his property line to his premises. The private water service provider is responsible for the cost of maintaining water service pipelines from the main to the owner's property line, except that the property owner shall pay for pipe and other supplies used in maintaining water service lines between the main and his property line.

(2) A property owner is not liable for any injury or property damage associated with excavation in maintaining water service pipelines if the excavation does not occur between his property line and his premises.

History: En. Sec. 1, Ch. 184, L. 1987.

Part 6

Movement of Structures

69-4-601. Movement of structures and interference with wires — notice required. No person, firm, or corporation moving, hauling, or transporting any house, building, derrick, or other structure shall cut, move, raise, or in any manner interfere with an electric light or electric power wire or poles or with telephone or telegraph wires, cables, messenger wires, guy wires, or poles without giving notice to the owner or agent of said wires or poles, as hereinafter provided.

History: En. Sec. 1, Ch. 55, L. 1929; re-en. Sec. 2711.1, R.C.M. 1935; amd. Sec. 1, Ch. 174, L. 1937; amd. Sec. 14, Ch. 137, L. 1941; R.C.M. 1947, 24-136.

69-4-602. Procedure to give required notice. The person, firm, or corporation moving any house, building, derrick, or other structure shall give the person, firm, or corporation owning or operating the wires or poles, at their principal office and their nearest office within the state, not less than 10 days' written notice of the proposed time and place of moving a structure. The owner of the wires or poles shall give the mover a written estimate of the cost of cutting, raising, or moving the wires or poles at least 3 days prior to the move or within 10 days after receipt of the written notice of the move, whichever time comes sooner.

History: En. Sec. 2, Ch. 55, L. 1929; re-en. Sec. 2711.2, R.C.M. 1935; R.C.M. 1947, 24-137; amd. Sec. 1, Ch. 442, L. 1983.

69-4-603. Procedure to accomplish move. (1) It shall then be the duty of any person, firm, or corporation owning or operating said poles or wires after service of notice, as required by 69-4-602, to furnish competent workmen or linemen to remove such poles or raise or cut such wires as will be necessary to facilitate moving such house, building, derrick, or other structure.

(2) The necessary and reasonable expense of raising or cutting the wires or of removing the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses must be determined at a hearing to be held within 180 days of October 1, 1983, and must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of removing the poles shall be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.

(3) The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by such utilities shall be apportioned as in subsection (2).

(4) Owners of prefabricated structures built with the intention of moving shall pay the necessary and reasonable costs of raising or cutting wires or cables or moving poles to facilitate the movement.

(5) No person, firm, or corporation owning or engaged in moving any house, building, derrick, or other structure shall raise, cut, or in any way interfere with any such poles or wires, unless the persons or authorities owning or having control of the same shall refuse to do so after having been notified, as required by 69-4-602; then, only competent and experienced workmen or linemen shall be employed in such work, and in such case the necessary and reasonable expense shall be paid by the owners of the poles and wires handled. The work shall be done in a careful and workmanlike manner, and the poles and wires shall be promptly replaced and the damages thereto promptly repaired.

History: En. Sec. 3, Ch. 55, L. 1929; re-en. Sec. 2711.3, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1951; R.C.M. 1947, 24-138; amd. Sec. 2, Ch. 442, L. 1983.

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-4-604. Unlawful interference with lines. It shall be unlawful for any person, firm, or corporation engaged as principal or employee in moving any house, building, derrick, or other structure, as provided in this part, to move, touch, cut, molest, or in any way interfere with any electric light, electric power, telephone, or telegraph wires, cables, messenger wires, or guy wires or any poles bearing any such wires, except in compliance with the provisions of this part.

History: **En. Sec. 4, Ch. 55, L. 1929; re-en. Sec. 2711.4, R.C.M. 1935; amd. Sec. 2, Ch. 174, L. 1937; amd. Sec. 15, Ch. 137, L. 1941; R.C.M. 1947, 24-139.**

Cross-References

Misdemeanor — penalty when none specified, 46-18-212.

Parts 7 through 10 reserved

Part 11

Liability for Bypassing or Tampering With Meter

Part Cross-References

Theft of services, 45-6-305.

Obtaining communication services with intent to defraud, 45-6-306.

69-4-1101. Purpose — remedies cumulative. It is the purpose of this part to impose a substantial civil penalty upon those persons who, at the cost of their fellow citizens, obtain utility services at less than their true value through bypassing or tampering as defined in 69-4-1102. This part does not supersede or replace other remedies provided for in law or equity.

History: **En. Sec. 1, Ch. 678, L. 1985.**

69-4-1102. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Bypassing" means any act, using any means, the purpose of which is to obtain utility service without having such service pass through the authorized meter provided for measuring or registering such service.

(2) "Person" means an individual, firm, partnership, corporation, unincorporated association, or other legal or business entity or the executor, administrator, trustee, receiver, assignee, or personal representative thereof.

(3) "Tampering" means damaging, altering, adjusting, or in any manner interfering with or obstructing the operation or function of any authorized metering device provided for measuring or registering utility service.

(4) "Utility" means any public utility, municipally owned utility, or cooperative utility that provides electricity, gas, water, sewage disposal, or combination thereof, for sale to consumers.

(5) "Utility service" means the provision of electricity, gas, water, or sewer service.

History: **En. Sec. 2, Ch. 678, L. 1985.**

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-4-1103. Liability for bypass or tampering. (1) A person who bypasses or tampers, either for his own benefit or the benefit of another, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (2) precludes collection under this subsection.

(2) A person who receives utility services, knowing that the measurement of such services is being affected by bypassing or tampering, is liable to the affected utility as provided in 69-4-1104 for services actually provided by the utility. Collection under subsection (1) precludes collection under this subsection.

History: En. Sec. 3, Ch. 678, L. 1985.

69-4-1104. Action for recovery of reasonable value — penalty. A utility may institute a civil action against a person described in 69-4-1103 to recover the reasonable value of the services actually provided to the person. Upon a finding that such person is liable to the utility, the court may enter judgment against the person for up to three times the reasonable value of the utility's services actually provided and may award to the prevailing party its costs, including reasonable attorney fees, incurred in the action and the costs, including expert witness fees, of presenting such expert testimony as is reasonably necessary.

History: En. Sec. 4, Ch. 678, L. 1985.

Cross-References

Costs, Title 25, ch. 10.

CHAPTER 5

POWER AND ENERGY COMPANIES

Part 1 — Territorial Integrity for Electric Suppliers

69-5-101. Short title.
69-5-102. Definitions.
69-5-103. Territorial integrity of certain municipalities and electric suppliers in outlying areas.
69-5-104. Continuation of service to existing consumers.
69-5-105. Service to new consumers.
69-5-106. Service to industrial or commercial premises.
69-5-107. Service to property owned by electric supplier.
69-5-108. Agreements between electric suppliers as to service areas.
69-5-109. Special provisions for annexed areas.
69-5-110. Jurisdiction of district courts over disputes.
69-5-111. Judicial remedies.

Chapter Cross-References

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Exemption from corporate taxes, 15-31-102.

Financing statement — definitions and requirements, 30-9-409.

Perfection of security interest in transmitting utility's property, 30-9-409.

Relocation of utilities' facilities, 60-4-402.

Part 1

Territorial Integrity for Electric Suppliers

69-5-101. Short title. This part shall be known and may be cited as the "Territorial Integrity Act of 1971".

History: En. Sec. 1, Ch. 7, L. 1971; R.C.M. 1947, 70-501.

69-5-102. Definitions. When used in this part, the following definitions apply:

(1) "Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered.

(2) "Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana.

(3) "Electric supplier" means any electrical utility and any electric cooperative.

(4) "Electric utility" means a person, firm, or corporation other than an electric cooperative which furnishes electrical service to the public.

(5) "Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities.

(6) "Line" means any electric conductor operating at a nominal voltage level of 34,500 volts or less, measured phase-to-phase.

(7) "Premises" means a building, residence, structure, or facility to which electricity is being or is to be furnished; provided, that two or more buildings, structures, or facilities which are located on one tract or contiguous tracts of land and are utilized by one electric consumer for farming, business, commercial, industrial, institutional, governmental, or trailer court purposes shall together constitute one premises, except that any such building, structure, or facility, other than a trailer court, shall not, together with any other building, structure, or facility, constitute one premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

History: En. Sec. 2, Ch. 7, L. 1971; amd. Sec. 1, Ch. 68, L. 1975; R.C.M. 1947, 70-502.

Cross-References

Rural electric and telephone cooperatives defined, 35-18-102.

69-5-103. Territorial integrity of certain municipalities and electric suppliers in outlying areas. Electric suppliers shall have rights and be subject to restrictions as provided in 69-5-104 through 69-5-107 with respect to service in:

(1) all areas outside the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on or after March 17, 1939; and

(2) every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(part).

Cross-References

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18.

69-5-104. Continuation of service to existing consumers. Every electric supplier shall have the right to serve all premises being served by it or to which any of its facilities are attached on February 1, 1971.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(1).

69-5-105. Service to new consumers. (1) Subject to 69-5-106, the electric supplier having a line nearest the premises, as measured in accordance with subsection (2), shall serve premises initially requiring service after February 1, 1971.

(2) All measurements under this part shall be made on the shortest straight line which can be drawn from the conductor nearest the premises to the nearest permanent portion of the premises. Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(2).

69-5-106. Service to industrial or commercial premises. (1) An electric utility has the right to furnish electric service to any industrial or commercial premises if the estimated connected load for full plant operation at such industrial or commercial premises will be 400 kilowatts or larger within 2 years from the date of initial service provided such electric utility can extend its lines to such industrial or commercial premises at less cost to the electric utility or the industrial or commercial customer than the electric cooperative cost. The estimated connected load shall be determined from the plans and specifications prepared for construction of the premises or, if such estimate is not available, shall be determined by agreement of the electric supplier and the customer. The fact that actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric supplier initially providing service to continue service to such premises.

(2) An independent consultant engineer agreeable to both electric suppliers or, in the event of failure of the electric suppliers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric supplier can extend its lines to the consumer at the least cost. The cost of such engineering services shall be paid equally by the electric suppliers involved.

(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(3); amd. Sec. 12, Ch. 43, L. 1979.

69-5-107. Service to property owned by electric supplier. Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier.

History: En. Sec. 3, Ch. 7, L. 1971; R.C.M. 1947, 70-503(4).

69-5-108. Agreements between electric suppliers as to service areas. Notwithstanding the provisions of 69-5-103 through 69-5-107, any electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises which another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers.

History: En. Sec. 4, Ch. 7, L. 1971; R.C.M. 1947, 70-504.

69-5-109. Special provisions for annexed areas. With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:

(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.

(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971.

History: En. Sec. 5, Ch. 7, L. 1971; R.C.M. 1947, 70-505; amd. Sec. 13, Ch. 43, L. 1979.

69-5-110. Jurisdiction of district courts over disputes. The district courts of the county or counties within which the premises or lines involved in any dispute are located shall have jurisdiction under this part over all electric suppliers subject to the provisions thereof.

History: En. Sec. 6, Ch. 7, L. 1971; R.C.M. 1947, 70-506.

69-5-111. Judicial remedies. (1) Whenever it shall appear that any electric supplier is failing or omitting or about to fail or omit to do anything required of it by this part or is doing or is about to do anything or to permit anything to be done contrary to or in violation of this part, any electric supplier affected thereby shall have the right to file a complaint in the district court briefly setting forth the acts or omissions complained of and requesting an injunction.

(2) If an affidavit showing that grounds exist therefor is filed with the complaint, a temporary restraining order shall be issued without notice. A copy of the temporary restraining order, complaint, and affidavit shall be served upon the defendant, together with an order to show cause why the temporary restraining order should not be made permanent, within 5 days after issuance of the temporary restraining order. The hearing on the order to show cause must be held at a date specified therein, which shall not be more than 10 days after service thereof and shall take precedence over all matters pending before the district court. A judgment making the injunction permanent or dissolving the temporary restraining order theretofore issued and

dismissing the complaint must be made not later than 10 days after the hearing on the order to show cause.

(3) Any party aggrieved by the order may appeal to the supreme court of Montana by filing a notice of appeal in the district court within 20 days from entry of the order. The appeal must be perfected within 20 days thereafter and shall take precedence over all matters pending before the supreme court of Montana.

History: En. Sec. 7, Ch. 7, L. 1971; R.C.M. 1947, 70-507.

Cross-References

Notice of appeal, Rule 4, M.R.App.P. (see Title 25, ch. 21).

Affidavits, Title 26, ch. 1, part 10.

Preliminary injunctions, Title 27, ch. 19, parts 2, 3, and 4.

CHAPTER 6

COMMUNICATION UTILITIES

Part 1 — General Provisions

69-6-101. Connection of telegraph and telephone lines.
69-6-102. Prohibition on consolidation of competing telegraph or telephone companies.
69-6-103. Maintenance of telephones in offices of railroad, telegraph, and express companies.
69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials.

Chapter Cross-References

Disposition of telephone license taxes, 15-1-501.

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Telephone company license tax, Title 15, ch. 53, part 1.

Financing statement — definitions and requirements, 30-9-409.

Perfection of security interest in transmitting utility's property, 30-9-409.

Rural Electric and Telephone Cooperative Act, Title 35, ch. 18, parts 1 through 5.

Permissible work hours for employees, 39-4-106.

Obtaining communication services with intent to defraud, 45-6-306.

Failure to yield party line, 45-8-114.

Violation of privacy in communications, 45-8-213.

Relocation of utilities' facilities, 60-4-402.

Regulated telecommunications, Title 69, ch. 3, part 8.

Eminent domain — utility lines as public use, 70-30-102.

Permissible easements for utilities, 76-6-203.

Easements for public uses, 77-2-101.

Part 1

General Provisions

69-6-101. Connection of telegraph and telephone lines. (1) Any association or corporation or the lessees or managers thereof, organized for the purpose, or any individual shall have the right to construct and maintain lines of telegraph or telephone within this state and connect the same with other lines.

(2) In case such persons or corporations cannot agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under Title 70, chapter 30, with the damages assessed and the right of connection granted as provided in Title 70, chapter 30.

History: En. Sec. 1001, Civ. C. 1895; re-en. Sec. 4401, Rev. C. 1907; re-en. Sec. 6646, R.C.M. 1921; re-en. Sec. 6646, R.C.M. 1935; R.C.M. 1947, 70-302.

69-6-102. Prohibition on consolidation of competing telegraph or telephone companies. No telegraph or telephone company shall:

(1) consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line; or

(2) acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

History: En. Sec. 1002, Civ. C. 1895; re-en. Sec. 4402, Rev. C. 1907; re-en. Sec. 6647, R.C.M. 1921; re-en. Sec. 6647, R.C.M. 1935; R.C.M. 1947, 70-303.

69-6-103. Maintenance of telephones in offices of railroad, telegraph, and express companies. (1) It is hereby made the duty of every railroad, telegraph, and express company doing business in the state to install or allow to be installed in its ticket office, public office, and freight office, in all cities and towns in this state, where there are, at the time, one or more public telephone exchanges, a telephone of each public telephone exchange in said city or town and to maintain in each of said offices direct telephone connection with each of such exchanges. Nothing herein contained shall be construed to require said railroad, telegraph, or express company to build a telephone line, it being intended to require such company or companies to install or allow to be installed a telephone in each of its offices where it can be obtained by them as they may be obtained for other business offices in the same vicinity. Each railroad, telegraph, and express company shall cause to be promptly answered all calls made over such telephone connection during business hours. Such railroad, telegraph, and express companies shall not, in the absence of an agreement to the effect, be required to bear the expense incident to the installation of said telephones or to any charges for the use thereof. Over such telephone connection, such railroad, telegraph, or express company shall cause prompt and correct replies to be made to all reasonable and proper inquiries over such connection during business hours concerning the passenger, freight, or telegraph service of such railroad, telegraph, or express company.

(2) The term "business hours", as used in this section, shall be construed to mean such times as the office or depot of such railroad, telegraph, or express company may be open, with an officer or agent of such railroad, telegraph, or express company in charge for the transacting of business.

(3) Any railroad, telegraph, or express company failing or refusing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 182, L. 1907; Sec. 4340, Rev. C. 1907; re-en. Sec. 6579, R.C.M. 1921; re-en. Sec. 6579, R.C.M. 1935; Sec. 72-624, R.C.M. 1947; (2)En. Sec. 2, Ch. 182, L. 1907; Sec. 4341, Rev. C. 1907; re-en. Sec. 6580, R.C.M. 1921; re-en. Sec. 6580, R.C.M. 1935; Sec. 72-625, R.C.M. 1947; (3)En. Sec. 3, Ch. 182, L. 1907; Sec. 4342, Rev. C. 1907; re-en. Sec. 6581, R.C.M. 1921; re-en. Sec. 6581, R.C.M. 1935; Sec. 72-626, R.C.M. 1947; R.C.M. 1947, 72-624, 72-625, 72-626.

Cross-References

Misdemeanor — penalty when none specified, 46-18-212.

Duty to furnish shipping and passenger facilities, 69-14-202.

Posting of information concerning train schedules, 69-14-203.

69-6-104. Control of telephone communications to and from a person holding hostages — nonliability of telephone company officials. A supervisory law enforcement official who has jurisdiction in a geographical area where hostages are being held and who has probable cause to believe that the holder of the hostages is committing a crime may order a previously designated telephone security employee or other telephone company official to arrange to cut, reroute, or divert telephone lines in order to prevent the holder of the hostages from communicating with any person other than a law enforcement officer or an individual authorized by a law enforcement officer. The serving telephone company within the geographical area of a law enforcement agency shall designate a telephone company security employee or other telephone company official and an alternate to provide all required assistance to law enforcement officials to carry out the purposes of this section. A telephone security employee or other telephone company official acting in good faith under an order given pursuant to this section does not commit the offense of violating privacy in communications and is not liable in any civil action brought as a result of such good faith actions.

History: En. Sec. 2, Ch. 356, L. 1979.

Cross-References

Aggravated kidnapping, 45-5-303.

Privacy in communications, 45-8-213.

CHAPTER 7

MUNICIPAL UTILITIES

Part 1 — Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality — limitation.
69-7-102. Rate increases over maximum.
69-7-103 through 69-7-110 reserved.
69-7-111. Municipal rate hearing required — notice.
69-7-112. Conduct of municipal rate hearing.
69-7-113. Appeals.
69-7-114 through 69-7-120 reserved.
69-7-121. Annual report to public service commission.

Part 2 — Operation of Utilities

69-7-201. Rules for operation of municipal utility.

Chapter Cross-References

Grant of franchise to public utility by city, 7-3-4222, 7-3-4223.

Officer or employee of city not to be interested in contract with public utility, 7-3-4256.

Authorization of cities and towns to furnish water and sewage, 7-13-4311, 7-13-4312.

Cities under commission-manager plan — power to own and regulate public utilities, 7-3-4313.

Ordinances and franchises concerning public utilities not emergency measures, 7-3-4325, 7-3-4326.

Renewal of grant for construction of public utility, 7-3-4450.

Destruction of public records relating to utilities, 7-5-4124.

Metropolitan sanitary district ratemaking, 7-13-144.

General provisions related to county utility services, Title 7, ch. 13, part 21.

County water and sewer districts, Title 7, ch. 13, parts 22 and 23.

Municipal utility services — general provisions, Title 7, ch. 13, part 41.

Public sewer systems, Title 7, ch. 13, part 42.

Municipal sewage and water systems, Title 7, ch. 13, part 43.

Illegal use of water or sewer system, 7-13-4313.

Local government water supply and regulation, Title 7, ch. 13, part 44.

Prohibited contributions to candidates, 13-35-227.

Assessment of public utilities, 15-8-406, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Report of property by utilities to Department of Revenue, 15-23-301.

Energy conservation materials in dwellings — loans, 15-32-107.

Telephone company license tax, Title 15, ch. 53.

Unclaimed property — deposits and refunds held by utilities, 70-9-203.

Permissible easements for utilities, 76-6-203.

Part 1

Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality — limitation. A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications shall be reasonable and just and, except as provided in 69-7-102, they may not be raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements. Annual revenues must be computed on any consecutive 12-month period for purposes of this chapter.

History: En. Sec. 1, Ch. 607, L. 1981; amd. Secs. 4, 8, Ch. 588, L. 1983.

Cross-References

Public bond issues, Title 17, ch. 5.

69-7-102. Rate increases over maximum. (1) If a municipal utility requires rate increases that yield an increase in total revenues in excess of 12% in any one year or rate increases for mandated federal and state capital improvements for which the increase exceeds amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements, it must make application for such increases to the public service commission.

(2) If the public service commission issues a rate order approving such an increase, the municipality may not increase any rates and charges under this chapter within 12 months of the commission's order unless an increase is necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share for mandated federal and state capital improvements.

History: En. Sec. 5, Ch. 607, L. 1981; amd. Secs. 4, 9, Ch. 588, L. 1983.

Cross-References

Public bond issues, Title 17, ch. 5.

69-7-103 through 69-7-110 reserved.

69-7-111. Municipal rate hearing required — notice. (1) Except as provided in 75-6-108, if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel.

History: En. Sec. 2, Ch. 607, L. 1981; amd. Secs. 4, 10, Ch. 588, L. 1983; amd. Sec. 10, Ch. 645, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, inserted exception clause.

Cross-References

Montana Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2; Title 69, ch. 1, part 2.

Investigatory powers of Consumer Counsel, 69-2-203.

69-7-112. Conduct of municipal rate hearing. (1) At the hearing, all persons, associations, corporations or companies affected or interested, including the Montana consumer counsel, may be present and represented by counsel. The hearing may be continued from time to time by the governing body of the municipality. At the conclusion of the hearing, all interested parties shall be allowed to make such arguments as they may consider proper.

(2) Within 30 days after the hearing, the governing body of the municipality shall issue its decision. The decision is final 10 days after being filed with the municipal clerk. A copy of each revised rate schedule shall be filed with the public service commission upon final decision.

History: En. Sec. 3, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Office of municipal clerk, Title 7, ch. 4, part 45.

69-7-113. Appeals. (1) A party to a municipal rate hearing may appeal the decision of the municipality to the district court in whose jurisdiction the municipality lies.

(2) A person may appeal the adoption or application of municipal utility rules to the district court in whose jurisdiction the municipality lies.

History: En. Sec. 7, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Venue, Title 25, ch. 2.

69-7-114 through 69-7-120 reserved.

69-7-121. Annual report to public service commission. A municipality regulating its utility services must make an annual report to the public service commission and furnish a copy thereof to the Montana consumer counsel. The report shall set forth the rates and number of users of each service and classification, all rate increases, and the total income and expenditures of the utility as provided in 69-3-203.

History: En. Sec. 4, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Montana Consumer Counsel, Art. XIII, sec. 2, Mont. Const.; Title 5, ch. 15, part 2; Title 69, ch. 1, part 2.

Public Service Commission, 2-15-2602; Title 69, ch. 1, part 1.

Part 2

Operation of Utilities

69-7-201. Rules for operation of municipal utility. Each municipal utility shall adopt, with the concurrence of the municipal governing body, rules for the operation of the utility. The rules shall contain, at a minimum, those requirements of good practice which can be normally expected for the operation of a utility. They shall define or provide for use of meter or flat rate user charges, the classification of users, applications for service, and uses of the service. The rules shall outline the utility's procedure for discontinuance of service and reestablishment of service as well as the extension of service to users within the municipal boundaries and outside the municipal boundaries. The rule shall provide that rate increases for comparable classifications and zones outside the municipal boundaries may not exceed those set within the municipal limits under the provisions of this chapter.

History: En. Sec. 6, Ch. 607, L. 1981; amd. Sec. 4, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act — inapplicable to local governments, 2-4-102.

CHAPTERS 8 THROUGH 10

RESERVED

CHAPTER 11

REGULATION OF CARRIERS

Part 1 — General Provisions

69-11-101. Definitions.
69-11-102. Restrictions on preferential treatment.
69-11-103. Time schedules to be followed.
69-11-104. Right to compensation.
69-11-105. Effect of agreements on rights and obligations of carrier and other parties.
69-11-106. Gratuitous carriers.
69-11-107. General duty of care of carriers for reward.
69-11-108. Prohibition on confiscation of fuel.
69-11-109. Provision for transportation of passengers and property for free or reduced rates.
69-11-110 through 69-11-120 reserved.
69-11-121. Detriment caused by carrier.

Part 2 — Carriers of Passengers

69-11-201. Requirements for carriers of persons for reward.
69-11-202. Establishment and notice of schedule for passenger carriers.
69-11-203. Transport of passengers.
69-11-204. Carriage of baggage by carriers of persons.
69-11-205. Payment of fare by passengers.
69-11-206. Lien for payment of fare.
69-11-207. Authorization for free transportation.
69-11-208. Classes of persons who may receive free transportation.
69-11-209. Ejection of passengers.

Part 3 — Carriers of Messages

69-11-301. Requirements for carriers of messages for reward.
69-11-302. Order of transmission of messages.
69-11-303. Damages for refused or delayed message.
69-11-304. Loss of valuable letters.

Part 4 — Carriers of Property

69-11-401. General definitions.
69-11-402. Relationship of carrier to consignor and consignee.
69-11-403. Acceptance of freight.
69-11-404. Delivery of freight.
69-11-405. Procedure to terminate carrier's liability.
69-11-406. Payment of freightage.
69-11-407. Natural increase of freight.
69-11-408. Apportionment of freightage by contract.
69-11-409. Adjustment of freightage for change in time or place of delivery.
69-11-410. Carrier's lien for freightage.
69-11-411. Sale of perishable property for freightage.
69-11-412. Division of joint rates among carriers.
69-11-413 through 69-11-420 reserved.
69-11-421. Liability of inland carriers for loss.
69-11-422. Permissible limitations on liability.
69-11-423. Meaning of delivering carrier.
69-11-424. Examination of shipment.
69-11-425. Period in which to file claims.
69-11-426. Processing of claims for damage.
69-11-427. Liability between carriers.

69-11-428. Liability for delay.
69-11-429. Liability for valuable cargo.

Chapter Cross-References

Railroads, Title 69, ch. 14.

Part 1

General Provisions

Part Cross-References

Report of shipment data on oil or gas, 15-36-104.

Taxation of freight line companies, Title 15, ch. 55, part 1.

Report of amount of gasoline hauled, 15-70-209.

Unlawful sale of beer or malt liquor, 16-3-104.

Conveyance of liquors by carrier — restrictions, 16-3-106.

Sale of beer to common carrier, 16-3-232.

Carriers' reports of beer transported, 16-3-235.

Report of shipment and delivery of cigarettes, 16-11-104.

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Inspection of records — hazardous substances — loads, 50-30-108.

Rail transportation, Title 60, ch. 11.

Sale of freight to cover carrier's storage and freight bill, 70-6-411.

Storage of unclaimed property, 70-9-402.

Produce wholesaler's license — exemptions, 80-3-602.

Report of condition of produce upon arrival, 80-3-607.

Transportation of bees — certificate of health, 80-6-203.

Notice to Department of Agriculture of shipment of nursery stock, 80-7-116.

Expense of cleaning and disinfecting carriers' facilities after storing or transferring pesticides, 81-2-110.

Shipment of fish, game or nongame birds, game animals, fur-bearing animals, skins, or parts, 87-3-114.

69-11-101. Definitions. (1) Everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

(2) The "contract of carriage" is a contract for the conveyance of property, persons, or messages from one place to another.

History: (1)En. Sec. 2870, Civ. C. 1895; re-en. Sec. 5332, Rev. C. 1907; re-en. Sec. 7846, R.C.M. 1921; Cal. Civ. C. Sec. 2168; Based on Field Civ. C. Sec. 1134; re-en. Sec. 7846, R.C.M. 1935; Sec. 8-701, R.C.M. 1947; (2)En. Sec. 2770, Civ. C. 1895; re-en. Sec. 5296, Rev. C. 1907; re-en. Sec. 7811, R.C.M. 1921; Cal. Civ. C. Sec. 2085; Field Civ. C. Sec. 1085; re-en. Sec. 7811, R.C.M. 1935; Sec. 8-401, R.C.M. 1947; R.C.M. 1947, 8-401, 8-701.

Cross-References

Definition of ordinary livestock, 69-11-422.

69-11-102. Restrictions on preferential treatment. (1) A common carrier must not give preference in time, price, or otherwise to one person over another.

(2) A common carrier must always give a preference in time and may give a preference in price to the United States and to this state.

History: (1)En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; Sec. 8-703, R.C.M. 1947; (2)En. Sec. 2873, Civ. C. 1895; re-en. Sec. 5335, Rev. C. 1907; re-en. Sec. 7849, R.C.M. 1921; Cal. Civ. C. Sec. 2171; Field Civ. C. Sec. 1137; re-en. Sec. 7849, R.C.M. 1935; Sec. 8-704, R.C.M. 1947; R.C.M. 1947, 8-703(part), 8-704.

69-11-103. Time schedules to be followed. A common carrier must start at such time and place as he announces to the public unless detained by accident or the elements or in order to connect with carriers on other lines of travel.

History: En. Sec. 2874, Civ. C. 1895; re-en. Sec. 5336, Rev. C. 1907; re-en. Sec. 7850, R.C.M. 1921; Cal. Civ. C. Sec. 2172; re-en. Sec. 7850, R.C.M. 1935; R.C.M. 1947, 8-705.

69-11-104. Right to compensation. A common carrier is entitled to a reasonable compensation, and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

History: En. Sec. 2875, Civ. C. 1895; re-en. Sec. 5337, Rev. C. 1907; re-en. Sec. 7851, R.C.M. 1921; Cal. Civ. C. Sec. 2173; Field Civ. C. Sec. 1139; re-en. Sec. 7851, R.C.M. 1935; R.C.M. 1947, 8-706.

69-11-105. Effect of agreements on rights and obligations of carrier and other parties. (1) The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

(2) A common carrier cannot be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

(3) A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire and the time, place, and manner of delivery therein stated, but his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code.

History: (1)En. Sec. 2876, Civ. C. 1895; re-en. Sec. 5338, Rev. C. 1907; re-en. Sec. 7852, R.C.M. 1921; Cal. Civ. C. Sec. 2174; re-en. Sec. 7852, R.C.M. 1935; Sec. 8-707, R.C.M. 1947; (2)En. Sec. 2877, Civ. C. 1895; re-en. Sec. 5339, Rev. C. 1907; re-en. Sec. 7853, R.C.M. 1921; Cal. Civ. C. Sec. 2175; Field Civ. C. Sec. 1141; re-en. Sec. 7853, R.C.M. 1935; Sec. 8-708, R.C.M. 1947; (3)En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R.C.M. 1921; Cal. Civ. C. Sec. 2176; Field Civ. C. Sec. 1142; re-en. Sec. 7854, R.C.M. 1935; amd. Sec. 11-105, Ch. 264, L. 1963; Sec. 8-709, R.C.M. 1947; R.C.M. 1947, 8-707, 8-708, 8-709.

Cross-References

Negligence, 27-1-701, 27-1-702.

Fraud, 28-2-404 through 28-2-406.

Special provisions relating to bills of lading, Title 30, ch. 7, part 3.

69-11-106. Gratuitous carriers. (1) Carriers without reward are subject to the same rules as employees without reward, except as is otherwise provided by this chapter.

(2) A carrier without reward who has begun to perform his undertaking must complete it in like manner as if he had received a reward unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

(3) A carrier of persons without reward must use ordinary care and diligence for their safe carriage. A carrier of property without reward must use at least slight care and diligence.

History: (1)En. Sec. 2771, Civ. C. 1895; re-en. Sec. 5297, Rev. C. 1907; re-en. Sec. 7812, R.C.M. 1921; Cal. Civ. C. Sec. 2089; Field Civ. C. Sec. 1090; re-en. Sec. 7812, R.C.M. 1935; Sec. 8-402, R.C.M. 1947; (2)En. Sec. 2772, Civ. C. 1895; re-en. Sec. 5298, Rev. C. 1907; re-en. Sec. 7813, R.C.M. 1921; Cal. Civ. C. Sec. 2090; Field Civ. C. Sec. 1091; re-en. Sec. 7813, R.C.M. 1935; Sec. 8-403, R.C.M. 1947; (3)Ap. p. Sec. 2780, Civ. C. 1895; re-en. Sec. 5299, Rev. C. 1907; re-en. Sec. 7814, R.C.M. 1921; Cal. Civ. C. Sec. 2096; Field Civ. C. Sec. 1092; re-en. Sec. 7814, R.C.M. 1935; Sec. 8-404, R.C.M. 1947; Ap. p. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; R.C.M. 1947, 8-402, 8-403, 8-404, 8-411(part).

Cross-References

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

Duties of gratuitous employee, 39-2-401.

69-11-107. General duty of care of carriers for reward. (1) A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

(2) A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties.

(3) A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

History: (1)En. Sec. 2790, Civ. C. 1895; re-en. Sec. 5300, Rev. C. 1907; re-en. Sec. 7815, R.C.M. 1921; Cal. Civ. C. Sec. 2100; Field Civ. C. Sec. 1093; re-en. Sec. 7815, R.C.M. 1935; Sec. 8-405, R.C.M. 1947; (2)En. Sec. 2810, Civ. C. 1895; re-en. Sec. 5306, Rev. C. 1907; re-en. Sec. 7821, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1099; re-en. Sec. 7821, R.C.M. 1935; Sec. 8-411, R.C.M. 1947; (3)En. Sec. 2861, Civ. C. 1895; re-en. Sec. 5331, Rev. C. 1907; re-en. Sec. 7845, R.C.M. 1921; Cal. Civ. C. Sec. 2162; Field Civ. C. Sec. 1133; re-en. Sec. 7845, R.C.M. 1935; Sec. 8-419, R.C.M. 1947; R.C.M. 1947, 8-405, 8-411(part), 8-419.

Cross-References

Damages, Title 27, ch. 1, part 2.

Liability, Title 27, ch. 1, part 7.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-11-108. Prohibition on confiscation of fuel. (1) It shall be unlawful for any person, railway company, or common carrier to confiscate or take for his or its own use or for the use of another any coal or other fuel in transit except when such coal or other fuel is necessary for the preservation of life or property or is required for the moving of trains of such common carrier. In a suit under this section to recover the penalty and damages, the burden of proof shall be on the person, railroad company, or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property or was required for the moving of trains of such common carrier.

(2) Any person, railroad company, or common carrier who shall confiscate or take any coal or fuel, either for his or its own use or for the use of another, shall be liable to the consignee or owner of such coal or fuel in double the value of such coal or fuel at the point of shipment and such other damages as may be caused by the confiscation of such coal. Such liability shall be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confis-

cating such coal or fuel. In every case wherein coal or other fuel is taken or used by any such person, railroad company, or common carrier, it shall be the duty of such person, railroad company, or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal and to pay and compensate him therefor within 30 days from the time of the taking.

(3) Any person, corporation, or common carrier who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $200.

History: (1)En. Sec. 1, Ch. 119, L. 1907; Sec. 4355, Rev. C. 1907; re-en. Sec. 6592, R.C.M. 1921; re-en. Sec. 6592, R.C.M. 1935; Sec. 72-637, R.C.M. 1947; (2)En. Sec. 2, Ch. 119, L. 1907; Sec. 4356, Rev. C. 1907; re-en. Sec. 6593, R.C.M. 1921; re-en. Sec. 6593, R.C.M. 1935; Sec. 72-638, R.C.M. 1947; (3)En. Sec. 3, Ch. 119, L. 1907; Sec. 4357, Rev. C. 1907; re-en. Sec. 6594, R.C.M. 1921; re-en. Sec. 6594, R.C.M. 1935; Sec. 72-639, R.C.M. 1947; R.C.M. 1947, 72-637, 72-638, 72-639.

Cross-References

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

69-11-109. Provision for transportation of passengers and property for free or reduced rates. (1) No provisions of the laws of this state prevent any person, association, company, or corporation engaged as a common carrier of persons or property in this state from carrying, storing, or handling property free or at reduced rates for the United States, for state or municipal governments, or for charitable institutions; property which is being transported to or from fairs and expositions for exhibit thereat; or cars used by the government of the United States or the state for the transportation of fish and from carrying free or at reduced rates agents and employees employed in such transportation; and nothing therein contained prevents such person, association, company, or corporation from issuing free transportation or selling tickets at reduced rates to the classes of persons listed in 69-11-208.

(2) When free transportation or a ticket at a reduced rate is issued to any officer or any president or member of the faculty of any educational institution referred to in 69-11-208(1)(q), it shall only be issued upon the application of the secretary of state and the transportation or ticket shall be delivered to the secretary of state for delivery to the person or persons applying therefor. The secretary of state shall keep record of all transportation and tickets at reduced rates so received and delivered by him. The state officer and the president and faculty of the state educational institutions, when traveling upon any free transportation, may not charge any mileage against the state, or if traveling upon a ticket sold at reduced fare, they may not charge mileage in excess of the cost of the ticket.

(3) The carrying free or at reduced rates of property or persons in any of the classes above specified shall be held to be a reasonable classification by common carriers for such purposes and not to be unjust discrimination. The carriage and transportation by any common carrier at free or reduced rates in any of the cases above specified is not a violation of any of the provisions of the laws of Montana and does not subject the common carrier to any penalty therefor.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1913; re-en. Sec. 6575, R.C.M. 1921; re-en. Sec. 6575, R.C.M. 1935; amd. Sec. 18, Ch. 315, L. 1974; Sec. 72-620, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1913; re-en. Sec. 6576, R.C.M. 1921; re-en. Sec. 6576, R.C.M. 1935; Sec. 72-621, R.C.M.1947; R.C.M. 1947, 72-620, 72-621; amd. Sec. 14, Ch. 43, L. 1979; amd. Sec. 180, Ch. 575, L. 1981.

Cross-References

Secretary of State, Title 2, ch. 15, part 4.

Mileage allowance, 2-18-503, 2-18-504.

Free transportation, 69-11-207.

69-11-110 through 69-11-120 reserved.

69-11-121. Detriment caused by carrier. (1) The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

(2) The detriment caused by the breach of a carrier's obligation to deliver freight where he has not converted it to his own use is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

(3) The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery.

(4) The damages prescribed by this section are exclusive of exemplary damages and interest except where those are expressly mentioned. Notwithstanding the provisions of this section, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except as provided in 27-1-303.

History: En. Secs. 4315, 4316, 4317, 4364, 4365, Civ. C. 1895; re-en. Secs. 6063, 6064, 6065, 6085, 6086, Rev. C. 1907; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1921; Cal. Civ. C. Secs. 3315, 3316, 3317, 3357, 3358; Field. Civ. C. Secs. 1855, 1856, 1857, 1876, 1877; re-en. Secs. 8681, 8682, 8683, 8703, 8704, R.C.M. 1935; R.C.M. 1947, 17-315, 17-316, 17-317, 17-605(part), 17-606(part); amd. Sec. 15, Ch. 43, L. 1979.

Cross-References

Damages, Title 27, ch. 1, part 2.

Part 2

Carriers of Passengers

Part Cross-References

City-operated bus lines, Title 7, ch. 14, part 44.

Payment of liquor taxes by passenger carriers, 16-1-402.

Passenger carriers' liquor license, 16-4-302.

Inspection of cars or aircraft, 16-6-103.

Inspection of carriers' records, 16-6-108.

Ticket agent for carrier exempted from insurance producer examination, 33-17-212.

Blanket disability insurance for common carrier defined, 33-22-601.

Deaf and blind entitled to full and equal accommodation of common carriers, 49-4-211.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

Special fees for buses and stage carriers, 61-10-207.

69-11-201. Requirements for carriers of persons for reward. (1) A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put and is not excused for default in this respect by any degree of care.

(2) A carrier of persons for reward must not overcrowd or overload his vehicle.

(3) A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention.

(4) A carrier of persons for reward must travel at a reasonable rate of speed, without any unreasonable delay or deviation from his proper route.

History: (1)En. Sec. 2791, Civ. C. 1895; re-en. Sec. 5301, Rev. C. 1907; re-en. Sec. 7816, R.C.M. 1921; Cal. Civ. C. Sec. 2101; Field Civ. C. Sec. 1094; re-en. Sec. 7816, R.C.M. 1935; Sec. 8-406, R.C.M. 1947; (2)En. Sec. 2792, Civ. C. 1895; re-en. Sec. 5302, Rev. C. 1907; re-en. Sec. 7817, R.C.M. 1921; Cal. Civ. C. Sec. 2102; Field Civ. C. Sec. 1095; re-en. Sec. 7817, R.C.M. 1935; Sec. 8-407, R.C.M. 1947; (3)En. Sec. 2793, Civ. C. 1895; re-en. Sec. 5303, Rev. C. 1907; re-en. Sec. 7818, R.C.M. 1921; Cal. Civ. C. Sec. 2103; Field Civ. C. Sec. 1096; re-en. Sec. 7818, R.C.M. 1935; Sec. 8-408, R.C.M. 1947; (4)En. Sec. 2794, Civ. C. 1895; re-en. Sec. 5304, Rev. C. 1907; re-en. Sec. 7819, R.C.M. 1921; Cal. Civ. C. Sec. 2104; Field Civ. C. Sec. 1097; re-en. Sec. 7819, R.C.M. 1935; R.C.M. 1947, 8-406, 8-407, 8-408, 8-409.

Cross-References

Negligence, 27-1-701, 27-1-702.

69-11-202. Establishment and notice of schedule for passenger carriers. Every common carrier of passengers by railroad or by vessel plying upon waters lying wholly within this state shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their trains or vessels at or within 10 minutes after the schedule time so established and notice given, under a penalty of $250 for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney of the county in the name of the state, and paid into the common school fund of the county.

History: En. Sec. 2872, Civ. C. 1895; re-en. Sec. 5334, Rev. C. 1907; re-en. Sec. 7848, R.C.M. 1921; Cal. Civ. C. Sec. 2170; re-en. Sec. 7848, R.C.M. 1935; R.C.M. 1947, 8-703(part).

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Revenues for education equalization, 20-9-331.

Posting information concerning train schedules, 69-14-203.

69-11-203. Transport of passengers. (1) A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

(2) A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

(3) A common carrier of persons may make rules for the conduct of his business and may require passengers to conform to them if they are lawful, public, uniform in their application, and reasonable.

History: (1)En. Sec. 2894, Civ. C. 1895; re-en. Sec. 5346, Rev. C. 1907; re-en. Sec. 7860, R.C.M. 1921; Cal. Civ. C. Sec. 2184; Based on Field Civ. C. Sec. 1147; re-en. Sec. 7860, R.C.M. 1935; Sec. 8-805, R.C.M. 1947; (2)En. Sec. 2895, Civ. C. 1895; re-en. Sec. 5347, Rev. C. 1907; re-en. Sec. 7861, R.C.M. 1921; Cal. Civ. C. Sec. 2185; Based on Field Civ. C. Sec. 1148; re-en. Sec. 7861, R.C.M. 1935; Sec. 8-806, R.C.M. 1947; (3)En. Sec. 2896, Civ. C. 1895; re-en. Sec. 5348, Rev. C. 1907; re-en. Sec. 7862, R.C.M. 1921; Cal. Civ. C. Sec. 2186; Field Civ. C. Sec. 1149; re-en. Sec. 7862, R.C.M. 1935; Sec. 8-807, R.C.M. 1947; R.C.M. 1947, 8-805, 8-806, 8-807.

Cross-References

Due process of law, Art II, sec. 17, Mont. Const.

Accommodations for and care to be taken of passengers, 69-14-205.

Transportation of passengers and property, 69-14-558.

Regulation of health and safety on railroads, 69-14-562.

69-11-204. Carriage of baggage by carriers of persons. (1) Baggage may consist of any articles intended for the use of a passenger while traveling or for his personal equipment.

(2) A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger without charge, except for an excess of weight over 100 pounds to a passenger; but if such carrier is a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than 60 pounds of baggage.

(3) The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

(4) A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged; except, that where baggage is transported by rail, it must be checked and carried in a regular baggage car and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

History: (1)En. Sec. 2891, Civ. C. 1895; re-en. Sec. 5343, Rev. C. 1907; re-en. Sec. 7857, R.C.M. 1921; Cal. Civ. C. Sec. 2181; Field Civ. C. Sec. 1144; re-en. Sec. 7857, R.C.M. 1935; Sec. 8-802, R.C.M. 1947; (2)En. Sec. 2890, Civ. C. 1895; re-en. Sec. 5342, Rev. C. 1907; re-en. Sec. 7856, R.C.M. 1921; Cal. Civ. C. Sec. 2180; Based on Field Civ. C. Sec. 1143; re-en. Sec. 7856, R.C.M. 1935; Sec. 8-801, R.C.M. 1947; (3)En. Sec. 2892, Civ. C. 1895; re-en. Sec. 5344, Rev. C. 1907; re-en. Sec. 7858, R.C.M. 1921; Cal. Civ. C. Sec. 2182; Field Civ. C. Sec. 1145; re-en. Sec. 7858, R.C.M. 1935; Sec. 8-803, R.C.M. 1947; (4)En. Sec. 2893, Civ. C. 1895; re-en. Sec. 5345, Rev. C. 1907; re-en. Sec. 7859, R.C.M. 1921; Cal. Civ. C. Sec. 2183; re-en. Sec. 7859, R.C.M. 1935; Sec. 8-804, R.C.M. 1947; R.C.M. 1947, 8-801, 8-802, 8-803, 8-804.

Cross-References

Liability, Title 27, ch. 1, part 7.

Baggage checks, 69-14-210.

69-11-205. Payment of fare by passengers. A common carrier may demand the fare of passengers either at starting or at any subsequent time.

History: En. Sec. 2897, Civ. C. 1895; re-en. Sec. 5349, Rev. C. 1907; re-en. Sec. 7863, R.C.M. 1921; Cal. Civ. C. Sec. 2187; Field Civ. C. Sec. 1150; re-en. Sec. 7863, R.C.M. 1935; R.C.M. 1947, 8-808.

Cross-References

Rules for fare and conduct of passengers, 69-14-206.

Expulsion of passengers refusing to pay fare, 69-14-207.

69-11-206. Lien for payment of fare. A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the law on liens.

History: En. Sec. 2900, Civ. C. 1895; re-en. Sec. 5352, Rev. C. 1907; re-en. Sec. 7866, R.C.M. 1921; Cal. Civ. C. Sec. 2191; Field Civ. C. Sec. 1153; re-en. Sec. 7866, R.C.M. 1935; R.C.M. 1947, 8-811.

Cross-References

Carrier's lien, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Liens, Title 71, ch. 3.

69-11-207. Authorization for free transportation. (1) No common carrier of passengers shall directly or indirectly issue, furnish, or give any free ticket, free pass, or free transportation for the carriage or passage of any person within this state, except as permitted in 69-11-208; nor shall any common carrier, in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the persons described in 69-11-208.

(2) The words "free ticket", "free pass", and "free transportation", as used in this section and 69-11-208, shall include any ticket, pass, contract, permit, or transportation issued, furnished, or given to any person by any common carrier of passengers for carriage or passage for any other consideration than money paid in the usual way at the rate, fare, or charge open to all who desire to purchase.

(3) Any common carrier or its officers, agents, or representatives violating any of the provisions of this section and 69-11-208 shall be fined in the sum of not less than $10 or more than $300 for each offense, and any person, other than the persons excepted in 69-11-208, who accepts or uses any free ticket, free pass, or free transportation for carriage or passage within this state shall be subject to a like penalty.

History: (1), (2)En. Sec. 1, Ch. 136, L. 1911; re-en. Sec. 6572, R.C.M. 1921; re-en. Sec. 6572, R.C.M. 1935; Sec. 72-616, R.C.M. 1947; (3)En. Sec. 3, Ch. 136, L. 1911; re-en. Sec. 6574, R.C.M. 1921; re-en. Sec. 6574, R.C.M. 1935; Sec. 72-619, R.C.M. 1947; R.C.M. 1947, 72-616, 72-619.

Cross-References

"Misdemeanor" defined, 45-2-101.

Reimbursement for travel expenses, 69-1-111.

Provision for transportation of passengers for free or reduced rates, 69-11-109.

69-11-208. Classes of persons who may receive free transportation. (1) The persons to whom free tickets, free passes, free transportation, and discriminating reduced rates may be issued, furnished, or given are the following:

(a) the officers, agents, employees, attorneys, physicians, and surgeons of such common carriers of passengers and the officers and employees of other common carriers upon the exchange of passes or tickets;

(b) the families of the persons included in subsection (1)(a);

(c) the general officers of any such common carriers;

(d) employees of sleeping car and express car companies and linemen of telegraph and telephone companies, railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors, newsboys and newsgirls on trains, and baggage agents;

(e) persons injured in wrecks and physicians and nurses attending such persons;

(f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous visitation;

(g) necessary caretakers of livestock, vegetables, and fruit, including return transportation to forwarding stations;

(h) the officers, agents, or regularly accredited representatives of labor organizations composed wholly of employees of railway companies;

(i) inmates of homes for the reform or rescue of the disadvantaged, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents, of such homes;

(j) superannuated and pensioned employees and members of their families and surviving spouses of such members;

(k) employees crippled and disabled in the service of the common carrier of passengers;

(l) policemen and firefighters of any city, wearing the insignia of their office, within the limits of such city;

(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian Associations and Young Women's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work;

(n) indigent, destitute, and homeless persons, while being transported by charitable societies or hospitals, and necessary agents and employees in such transportation;

(o) school children, to and from public or parochial schools;

(p) military personnel going to or coming from institutions for their keeping;

(q) executive, judicial, or legislative officers of this state, including the members of the faculty of the different educational institutions of this state;

(r) the furloughed employees of common carriers authorized by 69-11-207 to issue free transportation and members of their families;

(s) persons who have become disabled or infirm in the service of a common carrier or members of families of persons who have become disabled or infirm in the service of any such common carrier;

(t) families of persons killed and surviving spouses who have not remarried and minor children during minority of persons who died while in the service of any such common carrier;

(u) witnesses attending any legal investigation in which such carrier is interested;

(v) the remains of persons who died while in the employment of a common carrier; and

(w) ex-employees traveling for the purpose of entering the service of any such common carrier.

(2) The provisions of this section and 69-11-207 shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes, or free transportation may be furnished or given under the provisions of this section. Nothing in this section or 69-11-207 shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firefighters, and officers while in the performance of official duties.

History: Ap.p. Sec. 2, Ch. 136, L. 1911; re-en. Sec. 6573, R.C.M. 1921; amd. Sec. 1, Ch. 113, L. 1929; amd. Sec. 1, Ch. 78, L. 1933; re-en. Sec. 6573, R.C.M. 1935; amd. Sec. 35, Ch. 535, L. 1975; Sec. 72-617, R.C.M. 1947; Ap.p. Sec. 1, Ch. 9, L. 1929; re-en. Sec. 6573.1, R.C.M. 1935; amd. Sec. 36, Ch. 535, L. 1975; Sec. 72-618, R.C.M. 1947; R.C.M. 1947, 72-617(part), 72-618; amd. Sec. 16, Ch. 43, L. 1979.

Cross-References

Local government officials not to accept free transportation, 7-3-4256.

Reimbursement for travel expenses, 69-1-111.

Provision for transportation of passengers for free or reduced rates, 69-11-109.

69-11-209. Ejection of passengers. (1) A passenger who refuses to pay his fare or conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. This must be done with as little violence as possible and at any usual stopping place or near some dwelling house.

(2) After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

History: (1)En. Sec. 2898, Civ. C. 1895; re-en. Sec. 5350, Rev. C. 1907; re-en. Sec. 7864, R.C.M. 1921; Cal. Civ. C. Sec. 2188; Based on Field Civ. C. Sec. 1151; re-en. Sec. 7864, R.C.M. 1935; Sec. 8-809, R.C.M. 1947; (2)En. Sec. 2899, Civ. C. 1895; re-en. Sec. 5351, Rev. C. 1907; re-en. Sec. 7865, R.C.M. 1921; Cal. Civ. C. Sec. 2190; Field Civ. C. Sec. 1152; re-en. Sec. 7865, R.C.M. 1935; Sec. 8-810, R.C.M. 1947; R.C.M. 1947, 8-809, 8-810.

Cross-References

Rules of common carrier, 69-11-203.

Expulsion of passengers refusing to pay fare, 69-14-207.

Part 3

Carriers of Messages

69-11-301. Requirements for carriers of messages for reward. (1) A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed or to the person for whom they are intended.

(2) Such carrier by telegraph or telephone must deliver them at such place and to such person provided the place of address or the person for whom they are intended is within a distance of 2 miles from the main office of the carrier in the city or town to which the messages are transmitted. The carrier is not required, in making the delivery, to pay on his route toll or ferriage, but for any distance beyond 1 mile from such office, compensation may be charged for a messenger employed by the carrier.

History: En. Sec. 2860, Civ. C. 1895; re-en. Sec. 5330, Rev. C. 1907; re-en. Sec. 7844, R.C.M. 1921; Cal. Civ. C. Sec. 2161; re-en. Sec. 7844, R.C.M. 1935; R.C.M. 1947, 8-418.

69-11-302. Order of transmission of messages. (1) A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. If this is not practicable and several messages accumulate upon his hands, he must transmit them in the following order:

(a) messages from public agents of the United States or of this state on public business;

(b) messages giving information relating to the sickness or death of any person;

(c) messages intended in good faith for immediate publication in newspapers and not for any secret use;

(d) other messages in the order in which they were received.

(2) A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States or of this state on public business, to which he must always give priority.

History: (1)En. Sec. 2930, Civ. C. 1895; re-en. Sec. 5361, Rev. C. 1907; re-en. Sec. 7875, R.C.M. 1921; Cal. Civ. C. Sec. 2207; Based on Field Civ. C. Sec. 1164; re-en. Sec. 7875, R.C.M. 1935; Sec. 8-820, R.C.M. 1947; (2)En. Sec. 2931, Civ. C. 1895; re-en. Sec. 5362, Rev. C. 1907; re-en. Sec. 7876, R.C.M. 1921; Cal. Civ. C. Sec. 2208; Based on Field Civ. C. Sec. 1165; re-en. Sec. 7876, R.C.M. 1935; Sec. 8-821, R.C.M. 1947; R.C.M. 1947, 8-820, 8-821.

69-11-303. Damages for refused or delayed message. Every person whose message is refused or postponed contrary to the provisions of this chapter is entitled to recover from the carrier his actual damages and $50 in addition thereto.

History: En. Sec. 2932, Civ. C. 1895; re-en. Sec. 5363, Rev. C. 1907; re-en. Sec. 7877, R.C.M. 1921; Cal. Civ. C. Sec. 2209; Based on Field Civ. C. Sec. 1166; re-en. Sec. 7877, R.C.M. 1935; R.C.M. 1947, 8-822.

Cross-References

Damages, Title 27, ch. 1, parts 1 and 2.

69-11-304. Loss of valuable letters. A common carrier is not responsible for loss or miscarriage of a letter or package having the form of a letter containing money or notes, bills of exchange, or other papers of value unless he is informed at the time of its receipt of the value of its contents.

History: En. Sec. 2879, Civ. C. 1895; re-en. Sec. 5341, Rev. C. 1907; re-en. Sec. 7855, R.C.M. 1921; Cal. Civ. C. Sec. 2177; re-en. Sec. 7855, R.C.M. 1935; R.C.M. 1947, 8-710.

Cross-References

Liability, Title 27, ch. 1, part 7.

Part 4

Carriers of Property

Part Cross-References

Report of shipment data on oil or gas, 15-36-104.

Taxation of freight line companies, Title 15, ch. 55, part 1.

Report of amount of gasoline hauled, 15-70-209.

Unlawful sale of beer or malt liquor, 16-3-104.

Conveyance of liquors by carrier — restrictions, 16-3-106.

Sale of beer to common carrier, 16-3-232.

Carriers' reports of beer transported, 16-3-235.

Report of shipment and delivery of cigarettes, 16-11-104.

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Inspection of records — hazardous substances — loads, 50-30-108.

Sale of freight to cover carrier's storage and freight bill, 70-6-411.

Storage of unclaimed property, 70-9-402.

Produce wholesalers' license — exemptions, 80-3-602.

Report of condition of produce upon arrival, 80-3-607.

Transportation of bees — certificate of health, 80-6-203.

Notice to Department of Agriculture of shipment of nursery stock, 80-7-116.

Expense of cleaning and disinfecting carriers' facilities after storing or transferring pesticides, 81-2-110.

Shipment of fish, game or nongame birds, game animals, fur-bearing animals, skins, or parts, 87-3-114.

69-11-401. General definitions. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

History: En. Sec. 2800, Civ. C. 1895; re-en. Sec. 5305, Rev. C. 1907; re-en. Sec. 7820, R.C.M. 1921; Cal. Civ. C. Sec. 2114; Field Civ. C. Sec. 1098; re-en. Sec. 7820, R.C.M. 1935; R.C.M. 1947, 8-410.

69-11-402. Relationship of carrier to consignor and consignee. (1) A carrier must comply with the directions of the consignor or consignee to the same extent as an employee is bound to comply with those of his employer.

(2) When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

History: (1)En. Sec. 2811, Civ. C. 1895; re-en. Sec. 5307, Rev. C. 1907; re-en. Sec. 7822, R.C.M. 1921; Cal. Civ. C. Sec. 2115; Field Civ. C. Sec. 1100; re-en. Sec. 7822, R.C.M. 1935; Sec. 8-412, R.C.M. 1947; (2)En. Sec. 2812, Civ. C. 1895; re-en. Sec. 5308, Rev. C. 1907; re-en. Sec. 7823, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1101; re-en. Sec. 7823, R.C.M. 1935; Sec. 8-413, R.C.M. 1947; R.C.M. 1947, 8-412, 8-413.

Cross-References

General obligations of employees, Title 39, ch. 2, part 4.

69-11-403. Acceptance of freight. A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

History: En. Sec. 2871, Civ. C. 1895; re-en. Sec. 5333, Rev. C. 1907; re-en. Sec. 7847, R.C.M. 1921; Cal. Civ. C. Sec. 2169; Field Civ. C. Sec. 1135; re-en. Sec. 7847, R.C.M. 1935; R.C.M. 1947, 8-702.

69-11-404. Delivery of freight. (1) A carrier of property must deliver it to the consignee at the place to which it is addressed and in the manner usual at that place.

(2) If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

(a) If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

(b) If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

(c) In other cases, it must be delivered to the consignee or his agent, personally, if either can be found with reasonable diligence.

(3) If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

History: (1)En. Sec. 2813, Civ. C. 1895; re-en. Sec. 5309, Rev. C. 1907; re-en. Sec. 7824, R.C.M. 1921; Cal. Civ. C. Sec. 2118; Field Civ. C. Sec. 1103; re-en. Sec. 7824, R.C.M. 1935; Sec. 8-414, R.C.M. 1947; (2)En. Sec. 2814, Civ. C. 1895; re-en. Sec. 5310, Rev. C. 1907; re-en. Sec. 7825, R.C.M. 1921; Cal. Civ. C. Sec. 2119; Based on Field Civ. C. Sec. 1104; re-en. Sec. 7825, R.C.M. 1935; Sec. 8-415, R.C.M. 1947; (3)En. Sec. 2815, Civ. C. 1895; re-en. Sec. 5311, Rev. C. 1907; re-en. Sec. 7826, R.C.M. 1921; Cal. Civ. C. Sec. 2120; Based on Field Civ. C. Sec. 1105; re-en. Sec. 7826, R.C.M. 1935; R.C.M. 1947, 8-414, 8-415, 8-416.

Cross-References

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Detriment caused by carrier, 69-11-121.

Bailments, Title 70, ch. 6.

69-11-405. Procedure to terminate carrier's liability. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice thereof to him.

History: En. Sec. 2816, Civ. C. 1895; re-en. Sec. 5312, Rev. C. 1907; re-en. Sec. 7827, R.C.M. 1921; Cal. Civ. C. Sec. 2121; Field Civ. C. Sec. 1106; re-en. Sec. 7827, R.C.M. 1935; R.C.M. 1947, 8-417.

Cross-References

Duty of care — contractual limitation of warehouseman's liability, 30-7-204.

Lien of warehouseman, 30-7-209, 30-7-210.

Bailments, Title 70, ch. 6.

69-11-406. Payment of freightage. (1) A carrier may require his freightage to be paid upon his receiving the freight, but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

(2) The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

(3) The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it.

History: (1)En. Sec. 2840, Civ. C. 1895; re-en. Sec. 5321, Rev. C. 1907; re-en. Sec. 7835, R.C.M. 1921; Field Civ. C. Sec. 1115; re-en. Sec. 7835, R.C.M. 1935; Sec. 8-601, R.C.M. 1947; (2)En. Sec. 2841, Civ. C. 1895; re-en. Sec. 5322, Rev. C. 1907; re-en. Sec. 7836, R.C.M. 1921; Cal. Civ. C. Sec. 2137; Field Civ. C. Sec. 1116; re-en. Sec. 7836, R.C.M. 1935; Sec. 8-602, R.C.M. 1947; (3)En. Sec. 2842, Civ. C. 1895; re-en. Sec. 5323, Rev. C. 1907; re-en. Sec. 7837, R.C.M. 1921; Cal. Civ. C. Sec. 2138; Field Civ. C. Sec. 1117; re-en. Sec. 7837, R.C.M. 1935; Sec. 8-603, R.C.M. 1947; R.C.M. 1947, 8-601, 8-602, 8-603.

69-11-407. Natural increase of freight. No freightage can be charged upon the natural increase of freight.

History: En. Sec. 2843, Civ. C. 1895; re-en. Sec. 5324, Rev. C. 1907; re-en. Sec. 7838, R.C.M. 1921; Cal. Civ. C. Sec. 2139; Field Civ. C. Sec. 1118; re-en. Sec. 7838, R.C.M. 1935; R.C.M. 1947, 8-604.

69-11-408. Apportionment of freightage by contract. (1) If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

(2) If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

History: (1)En. Sec. 2844, Civ. C. 1895; re-en. Sec. 5325, Rev. C. 1907; re-en. Sec. 7839, R.C.M. 1921; Cal. Civ. C. Sec. 2140; Field Civ. C. Sec. 1119; re-en. Sec. 7839, R.C.M. 1935; Sec. 8-605, R.C.M. 1947; (2)En. Sec. 2845, Civ. C. 1895; re-en. Sec. 5326, Rev. C. 1907; re-en. Sec. 7840, R.C.M. 1921; Cal. Civ. C. Sec. 2141; Field Civ. C. Sec. 1120; re-en. Sec. 7840, R.C.M. 1935; Sec. 8-606, R.C.M. 1947; R.C.M. 1947, 8-605, 8-606.

Cross-References

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

69-11-409. Adjustment of freightage for change in time or place of delivery. (1) If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion and the consignee receive the freight only from necessity, the carrier is not entitled to any freightage.

(2) If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver it, on demand of the consignee, at the place and time of its arrival.

History: (1)En. Sec. 2846, Civ. C. 1895; re-en. Sec. 5327, Rev. C. 1907; re-en. Sec. 7841, R.C.M. 1921; Cal. Civ. C. Sec. 2142; Field Civ. C. Sec. 1121; re-en. Sec. 7841, R.C.M. 1935; Sec. 8-607, R.C.M. 1947; (2)En. Sec. 2847, Civ. C. 1895; re-en. Sec. 5328, Rev. C. 1907; re-en. Sec. 7842, R.C.M. 1921; Cal. Civ. C. Sec. 2143; Field Civ. C. Sec. 1122; re-en. Sec. 7842, R.C.M. 1935; Sec. 8-608, R.C.M. 1947; R.C.M. 1947, 8-607, 8-608.

Cross-References

Buyer's rights on improper delivery, 30-2-601.

69-11-410. Carrier's lien for freightage. A carrier has a lien for freightage, which is regulated by the law on liens.

History: En. Sec. 2848, Civ. C. 1895; re-en. Sec. 5329, Rev. C. 1907; re-en. Sec. 7843, R.C.M. 1921; Cal. Civ. C. Sec. 2144; Field Civ. C. Sec. 1123; re-en. Sec. 7843, R.C.M. 1935; R.C.M. 1947, 8-609.

Cross-References

Carrier's lien, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Liens, Title 71, ch. 3.

69-11-411. Sale of perishable property for freightage. If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him and collect his charges thereon, he may cause the property to be sold in open market to satisfy his lien for freightage.

History: En. Sec. 2917, Civ. C. 1895; re-en. Sec. 5360, Rev. C. 1907; re-en. Sec. 7874, R.C.M. 1921; Cal. Civ. C. Sec. 2204; re-en. Sec. 7874, R.C.M. 1935; R.C.M. 1947, 8-819.

Cross-References

Negligence, 27-1-701, 27-1-702.

"Cover" — buyer's procurement of substitute goods, 30-2-712.

Liens, Title 71, ch. 3.

69-11-412. Division of joint rates among carriers. (1) Whenever the commission shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway, or common carrier, the railroads, railways, or common carriers affected by such joint rate may, by agreement, provide for the distribution thereof between themselves.

(2) In the event that the railroads, railways, or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of 60 days after the order fixing and determining such joint rate shall have been made by the commission, then the commission shall have power and it is hereby made its duty to call a hearing, of which hearing the railroads, railways, or common carriers affected by such joint rate shall have at least 20 days' notice, and upon such hearing the commission shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

(3) Any railroad, railway company, or common carrier and its officers or agents who shall refuse or fail to comply with any order or rule relative to this section made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: (1), (2)En. Sec. 2, Ch. 105, L. 1913; re-en. Sec. 3836, R.C.M. 1921; re-en. Sec. 3836, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-158, R.C.M. 1947; (3)En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-163, R.C.M. 1947; R.C.M. 1947, 72-158, 72-163(part).

69-11-413 through 69-11-420 reserved.

69-11-421. Liability of inland carriers for loss. (1) Any common carrier, railroad, or transportation company subject to the provisions of 69-11-421 through 69-11-427, receiving property for transportation from a point in Montana to any other point in Montana, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading. No contract, receipt, rule, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed.

(2) Except as provided in 69-11-422, any common carrier, railroad, or transportation company receiving property for transportation from a point in Montana to a point in Montana or any common carrier, railroad, or transportation company delivering property so received and transported is liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the state when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading or in any contract or rule or in any tariff filed with the public service commission. Any such limitation, without respect to the manner or form in which it is sought to be made, is unlawful and void, except:

(a) an inherent defect, vice, or weakness or a spontaneous action of the property itself;

(b) the act of a public enemy of the United States or of this state;

(c) the act of the law;

(d) an irresistible superhuman cause;

(e) the act or default of the shipper or owner; or

(f) for natural shrinkage.

(3) Nothing in 69-11-421 through 69-11-426 deprives any holder of such receipt or bill of lading of any remedy or right of action.

(4) The liability imposed by this section also applies in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided in this part.

(5) A common carrier is liable, even in the cases excepted by subsection (2), if his ordinary negligence exposes the property to the cause of the loss.

History: (1) thru (4)En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; Sec. 8-812.1, R.C.M. 1947; (5)En. Sec. 2911, Civ. C. 1895; re-en. Sec. 5354, Rev. C. 1907; re-en. Sec. 7868, R.C.M. 1921; Cal. Civ. C. Sec. 2195; Field Civ. C. Sec. 1155; re-en. Sec. 7868, R.C.M. 1935; Sec. 8-813, R.C.M. 1947; R.C.M. 1947, 8-812.1(part), 8-813; amd. Sec. 17, Ch. 43, L. 1979.

Cross-References

Negligence, 27-1-701, 27-1-702.

Casualty to identified goods, 30-2-613.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

Issuance of bills of lading by railroad station agents — penalty, 69-14-215.

69-11-422. Permissible limitations on liability. (1) The provisions of 69-11-421 respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void shall not apply to:

(a) baggage carried on passenger trains or buses;

(b) property, except ordinary livestock, received for transportation, concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the public service commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property.

(2) (a) In the case listed in subsection (1)(b), such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as related to values, be held to be a violation of 69-11-421 through 69-11-427. Any tariff schedule which may be filed with the commission pursuant to the order referred to in subsection (1)(b) shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon. The commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

(b) The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-11-423. Meaning of delivering carrier. For the purpose of 69-11-421 through 69-11-427, the delivering carrier shall be construed to be the carrier performing the linehaul service nearest to the point of destination.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

69-11-424. Examination of shipment. (1) The consignee within 15 days after delivery must ask for an inspection of any damaged shipment, and the carrier must make an inspection within 5 working days thereafter.

(2) The consignee shall have the opportunity to examine the condition of the package in which the goods are shipped prior to signing the delivery receipt.

(3) The consignee may detain the driver at consignee's expense, not to exceed a minimum charge to be fixed by the commission, while he examines the shipment for possible concealed damage. During such examination, the freight bill may still be noted as to the extent of the damage or loss, if any. If examination discloses damage, the examination charge may be included in the consignee's claim for damage in proportion to the amount of the claim.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References
Buyer's right to inspection of goods, 30-2-513.

69-11-425. Period in which to file claims. It shall be unlawful for any such receiving or delivering common carrier to provide, by rule, contract, or otherwise, a shorter period for the filing of claims than 9 months and for the institution of suits than 2 years, such period for institution of suits to be computed from the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References
Statutes of Limitations, Title 27, ch. 2.

69-11-426. Processing of claims for damage. (1) Carriers must acknowledge receipt of each claim within 30 days and promptly investigate each claim and either pay or decline the claim within 120 days from the date of receipt thereof or provide an explanation for the delay in disposition. An assertion that the claim is still being investigated shall not constitute sufficient explanation.

(2) In the event a claimant or a carrier successfully prosecutes or defends a claim for loss or damage under 69-11-421 through 69-11-426, wherein it is alleged the carrier has not disposed of the claim within 120 days or explained the delay and the claimant has inquired of the carrier regarding the delay, in writing, within the 120-day period, then the court exercising jurisdiction may, at its discretion, award reasonable attorney fees to the successful party, but not to exceed $500.

History: En. 8-812.1 by Sec. 1, Ch. 168, L. 1975; R.C.M. 1947, 8-812.1(part).

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
C.I.F. or C. & F. — warranty of condition on arrival, 30-2-321.
Who can sue third parties for injury to goods, 30-2-722.

69-11-427. Liability between carriers. The common carrier, railroad, or transportation company issuing such receipt or bill of lading or delivering such property so received and so transported shall be entitled to recover, from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action at law brought by the owners of such property.

History: En. 8-812.2 by Sec. 2, Ch. 168, L. 1975; R.C.M. 1947, 8-812.2.

Cross-References
Costs, Title 25, ch. 10.
Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-11-428. Liability for delay. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

History: En. Sec. 2912, Civ. C. 1895; re-en. Sec. 5355, Rev. C. 1907; re-en. Sec. 7869, R.C.M. 1921; Cal. Civ. C. Sec. 2196; Field Civ. C. Sec. 1156; re-en. Sec. 7869, R.C.M. 1935; R.C.M. 1947, 8-814.

Cross-References

Negligence, 27-1-701, 27-1-702.

Damages for carrier's delay, 69-11-121.

69-11-429. Liability for valuable cargo. A common carrier of gold, silver, platina, or precious stones or of imitations thereof in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind is not liable for more than $50 upon the loss or injury of any one package of such articles unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

History: En. Sec. 2913, Civ. C. 1895; re-en. Sec. 5356, Rev. C. 1907; re-en. Sec. 7870, R.C.M. 1921; Cal. Civ. C. Sec. 2200; Field Civ. C. Sec. 1160; re-en. Sec. 7870, R.C.M. 1935; R.C.M. 1947, 8-815.

Cross-References

C.I.F. and C. & F. terms, 30-2-320.

Bills of lading — U.C.C. provisions, Title 30, ch. 7, part 3.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

CHAPTER 12

MOTOR CARRIERS

Part 1 — General Provisions

69-12-101. Definitions.
69-12-102. Scope of chapter — exemptions.
69-12-103. Provision for interstate or international carriers — cooperative or reciprocal registration.
69-12-104. Determination of operation between fixed termini or over a regular route.
69-12-105. Nature of accommodative transportation.
69-12-106. Acts indicative of status as motor carrier.
69-12-107. Status of private carriers under motor carrier laws.
69-12-108. Violations.

Part 2 — Role of Commission

69-12-201. Supervision and regulation of motor carriers.
69-12-202. Encouragement of common carrier motor transportation.
69-12-203. Supervisor of motor carriers.
69-12-204. General administrative procedure.
69-12-205. Rules to reflect differences between carrier classes.
69-12-206. Investigations by commission.
69-12-207. Temporary operating authority.
69-12-208. Provisions for bus service.
69-12-209. Enforcement procedures.

Part 3 — Classification and Motor Carrier Certificates

69-12-301. Classification of motor carriers.
69-12-302. Class C contract requirements.
69-12-303 through 69-12-310 reserved.
69-12-311. Class A motor carrier certificate.
69-12-312. Class B motor carrier certificate.
69-12-313. Class C motor carrier certificate.
69-12-314. Class D motor carrier certificate.
69-12-315. Class E motor carrier certificate.
69-12-316 through 69-12-320 reserved.
69-12-321. Hearing on application for motor carrier certificate.
69-12-322. Notice of hearing.
69-12-323. Decision on application.
69-12-324. Special provisions when federal or state contract involved.
69-12-325. Transfer of certificate or privilege.
69-12-326. Lease of certificate.
69-12-327. Revocation of certificate — right of review.
69-12-328 through 69-12-330 reserved.
69-12-331. Special provisions relating to transportation of buildings.
69-12-332 reserved.
69-12-333. Contracts for transportation of logs by Class E motor carriers — determination of rates — penalty.
69-12-334. Form for contracts for transportation of logs.
69-12-335. Transportation of logs under Class E authority only.

Part 4 — Requirements for Motor Carriers

69-12-401. Compliance with state law.
69-12-402. Compliance with commission rules.
69-12-403. Discontinuance of service.
69-12-404. Suspension of intrastate operating authority by petition.
69-12-405. Transportation of livestock.
69-12-406. Restriction on transportation of certain waste.
69-12-407. Records and reports.
69-12-408. Identification of ownership of certain large motor vehicles.
69-12-409 through 69-12-420 reserved.
69-12-421. Annual fee for motor carriers.
69-12-422. Effect of failure to pay compensation, fees, or charges.
69-12-423. Fees to be charged by commission.

Part 5 — Ratemaking Requirements

69-12-501. Rate schedules to be maintained.
69-12-502. Prohibition on deviation from rate schedules.
69-12-503. Rates to be reasonable and nondiscriminatory.
69-12-504. Procedure to revise rate schedule.
69-12-505. Suspension of proposed rate revision — hearing.
69-12-506 through 69-12-510 reserved.
69-12-511. Procedure to recover excess charges.

Part 6 — Carrier Agreements

69-12-601. Carrier agreements.
69-12-602. Limitations on carrier agreements.
69-12-603. Investigation of operation under agreement.
69-12-604. Hearing required on matters relating to agreements.
69-12-605. Relationship of carrier agreements and antitrust laws.
69-12-606 through 69-12-610 reserved.
69-12-611. Leasing of power equipment.
69-12-612. Interchange of equipment.

Chapter Cross-References

Operation of municipal busline subject to this chapter, 7-14-4403.

Report of shipment data on oil or gas, 15-36-104.

Motor carriers' reports of beer transported, 16-3-235.

Perfection of security interest in rolling stock, 30-9-409.

Fees under this chapter applicable to driveaway and towaway transportation, 61-4-304.

Scope of inspections limited to provisions of this chapter, 69-12-203.

Part 1

General Provisions

69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

(6) "Log" means a fallen or felled tree, delimbed and cut to length for transportation to a point for storage or processing.

(7) "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

(8) "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

(9) "Person" means an individual, firm, or partnership.

(10) "Public highway" means a public street, road, highway, or way in this state.

(11) "Railroad" means the movement of cars on rails, regardless of the motive power used.

(12) "Recyclable" means any material diverted from the solid waste stream that can be reused as raw material for new products and for which markets exist.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 18, Ch. 43, L. 1979; amd. Sec. 1, Ch. 341, L. 1991; amd. Sec. 1, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 341 inserted definition of recyclable.

Chapter 481 inserted definition of log. Amendment effective April 20, 1991.

Cross-References

Corporations, Partnerships, and Associations, Title 35.

Highways and Transportation, Title 60.

Railroad defined, 61-1-317, 69-14-101.

Transportation of livestock — exemptions, 69-12-405.

69-12-102. Scope of chapter — exemptions. (1) This chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities other than logs (not including manufactured products of agricultural commodities) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;

(j) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also on his way to or from his place of employment;

(k) the transportation of property by motor carrier as part of a continuous movement if such property, prior or subsequent to such part of a continuous movement, has been or will be transported by an air carrier;

(l) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(m) armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security;

(n) the transportation of a commodity under an agreement between a motor carrier and an office or agency of the United States government; or

(o) the transportation of handicapped or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) "handicapped" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. 1, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part); amd. Sec. 1, Ch. 514, L. 1979; amd. Sec. 1, Ch. 227, L. 1981; amd. Sec. 1, Ch. 27, L. 1983; amd. Sec. 1, Ch. 75, L. 1983; amd. Sec. 2, Ch. 160, L. 1983; amd. Sec. 1, Ch. 584, L. 1983; amd. Sec. 1, Ch. 178, L. 1985; amd. Sec. 1, Ch. 322, L. 1991; amd. Sec. 2, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 322 inserted (1)(o) exempting the transportation of handicapped or elderly persons provided by private, nonprofit organizations; and made minor changes in style.

Chapter 481 in (1)(a), after "commodities", inserted "other than logs"; and made minor change in style. Amendment effective January 1, 1992.

Cross-References

School buses and transportation, Title 20, ch. 10, part 1.

Regulation of armored car services, Title 37, ch. 60.

Regulation of logging trucks, 61-9-414.

Regulation of tow trucks, 61-9-416.

Air carrier defined, 67-1-101.

69-12-103. Provision for interstate or international carriers — cooperative or reciprocal registration. (1) (a) Except as provided in subsection (1)(b), the terms and provisions of this chapter apply to commerce with foreign nations and to commerce among the states to the extent that application may be permitted under the provisions of the constitution of the United States, treaties made under that constitution, and the acts of congress. The commission is authorized to exercise any additional power that may from time to time be conferred upon the state by an act of congress.

(b) An interstate or international motor carrier is not required to show public convenience and necessity to obtain a permit under this section except for the transportation of passengers or freight between points within this state. The power to regulate the transportation of passengers or freight between points within this state is specifically reserved in this chapter. A motor carrier operating in and about any national park whose rates and methods of accounting are controlled by a contract with the United States is not subject to regulation by the commission in conflict with the contract or in conflict with any regulation by the United States made pursuant to the contract or made pursuant to an act of congress of the United States.

(2) When transportation service is rendered partly in this state and partly in an adjoining state or foreign country, motor carriers shall comply with the provisions of this chapter relating to the payment of compensation and to the making of annual or special reports or statements required in this chapter and shall show the total business performed within this state and other information concerning its operation within this state that may be required by the commission, as fully and completely and in the same manner as required in this chapter of motor carriers operating wholly within this state.

(3) The commission may:

(a) enter into written agreements with agencies of other states to allow for the cooperative or reciprocal state registration of interstate or international motor carriers; and

(b) if all provisions of the agreement meet the requirements of this chapter and of the rules of the commission, authorize the agency of a participating state to:

(i) issue interstate motor carrier registrations, stamps, and permits;

(ii) accept filings of insurance, financial responsibility, and orders;

(iii) collect and disburse fees;

(iv) share and exchange information for audit, reporting, and enforcement purposes; and

(v) perform any other function that the commission determines is justified to facilitate the cooperative or reciprocal registration.

History: (1)En. Sec. 23, Ch. 184, L. 1931; re-en. Sec. 3847.23, R.C.M. 1935; Sec. 8-123, R.C.M. 1947; (2)En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; Sec. 8-116, R.C.M. 1947; R.C.M. 1947, 8-116(b), 8-123; amd. Sec. 1, Ch. 106, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) providing that the Commission may enter into agreements with other states to allow for cooperative or reciprocal state registration of interstate or international motor carriers and that the Commission may establish the functions that may be performed by the agencies of participating states; and made minor changes in style. Amendment effective March 20, 1991.

69-12-104. Determination of operation between fixed termini or over a regular route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini or over a regular route or otherwise under this chapter is a question of fact to be determined by the commission.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-105. Nature of accommodative transportation. An accommodative transportation movement by a person not in the transportation business is not a service for hire even though the persons owning the property transported or persons transported share in the cost or pay for the movement.

History: En. Sec. 1, Ch. 184, L. 1931; re-en. Sec. 3847.1, R.C.M. 1935; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969; amd. Sec. 1, Ch. 275, L. 1971; amd. Sec. l, Ch. 168, L. 1973; amd. Sec. 1, Ch. 174, L. 1973; amd. Sec. 1, Ch. 315, L. 1974; amd. Sec. 1, Ch. 66, L. 1975; amd. Sec. 1, Ch. 139, L. 1977; R.C.M. 1947, 8-101(part).

69-12-106. Acts indicative of status as motor carrier. Any person or corporation maintaining a public motor vehicle stand or by sign, symbol, or device or vehicle or clothing or by advertisement holding forth transportation for compensation or soliciting the transportation of persons or property for compensation among the public or soliciting for trips for compensation or providing transportation service to the public under the guise of leasing or buy-and-sell arrangements shall be deemed, prima facie, a "motor carrier" subject to this chapter. The burden of proof shall be on such person or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; re-en. Sec. 3847.21, R.C.M. 1935; amd. Sec. 3, Ch. 204, L. 1963; R.C.M. 1947, 8-121.

69-12-107. Status of private carriers under motor carrier laws. Nothing in this chapter shall be construed as converting or attempting to convert a private carrier into a common carrier. It is hereby declared that this chapter is intended primarily as a regulation of the public highways of the state.

History: En. Sec. 22, Ch. 184, L. 1931; re-en. Sec. 3847.22, R.C.M. 1935; R.C.M. 1947, 8-122.

Cross-References

Classification — highways and roads, 60-1-201.

69-12-108. Violations. Any motor carrier subject to the provisions of this chapter, as amended, or whenever any such motor carrier is a corporation, any director or officer thereof; any receiver, trustee, lessee, agent, or person acting for or employed by such corporation; any person, corporation, or association or officer, agent, or employee thereof; or any broker of property or officer, agent, or employee thereof who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this chapter, as amended, or who fails to obey, observe, or comply with any lawful order, decision, rule, direction, demand, or requirement of the commission or any part of the provisions thereof is:

(1) subject to a civil penalty, to be collected and deposited to the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense; or

(2) subject, upon conviction in a justice's court, to a fine of not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

History: **En. Sec. 19, Ch. 184, L. 1931; re-en. Sec. 3847.19, R.C.M. 1935; amd. Sec. 2, Ch. 204, L. 1963; amd. Sec. 1, Ch. 209, L. 1967; amd. Sec. 1, Ch. 68, L. 1971; amd. Sec. 1, Ch. 282, L. 1977; R.C.M. 1947, 8-119; amd. Sec. 19, Ch. 43, L. 1979; amd. Sec. 1, Ch. 330, L. 1979.**

Cross-References

Agency, Title 28, ch. 10.

"Misdemeanor" defined, 45-2-101.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Enforcement procedures, 69-12-209.

Revocation of certificate, 69-12-327.

Failure to display ownership identification — penalty, 69-12-408.

Part 2

Role of Commission

69-12-201. Supervision and regulation of motor carriers. (1) The commission has the power and authority and it is its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public.

(2) The commission may, by general order or otherwise, prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when rates are required for the best interests of public transportation.

(4) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class E motor carrier operating under contract when rates are required for the best interests of public transportation.

History: **(1)(a) thru (1)(e), (3)En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-103, R.C.M. 1947; (1)(f), (1)(g), (2)En. Sec. 2, Ch. 227, L. 1981; (4)En. Sec. 1,**

Ch. 201, L. 1961; Sec. 8-104.1, R.C.M. 1947; R.C.M. 1947, 8-103(part), 8-104.1; amd. Sec. 3, Ch. 226, L. 1981; amd. Sec. 2, Ch. 227, L. 1981; amd. Sec. 1, Ch. 686, L. 1985; amd. Sec. 3, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (4) allowing Commission to set rates of operations of Class E motor carriers; and made minor changes in style. Amendment effective April 20, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Fee, 69-12-423.

69-12-202. Encouragement of common carrier motor transportation. To fully secure adequate motor transportation facilities for all users of such service and to secure the public advantages thereof, the commission shall encourage a system of common carrier motor transportation within the state for the convenience of the shipping public. The maintenance of a common carrier motor transportation system within Montana is hereby declared to be a public purpose.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(part).

69-12-203. Supervisor of motor carriers. (1) The commission shall appoint a supervisor of motor carriers who shall have general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor shall be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. He shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities in behalf of the commission, including the investigation and prosecution of violations of this chapter, as amended, or the rules or orders prescribed thereunder by the commission.

(3) The supervisor and whatever field inspectors may be employed by the commission to assist him shall be deemed peace officers for the purpose of making arrests in connection with violations of this chapter, as amended, and issuing summonses, accepting bail, and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases, and other documents relating to the cargo, driver, routing, or ownership of such vehicles. The scope of the inspections is limited to the enforcement of the provisions of Title 69, chapter 12.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(b); amd. Sec. 20, Ch. 43, L. 1979; amd. Sec. 1, Ch. 331, L. 1979; amd. Sec. 4, Ch. 226, L. 1981; amd. Sec. 2, Ch. 686, L. 1985.

Cross-References

Enforcement of motor carriers law, 44-1-1005.

Arrest warrants, Title 46, ch. 6, part 2.

Bail, Title 46, ch. 9.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

69-12-204. General administrative procedure. Insofar as possible and applicable, the provisions of statutes prescribing the procedure before the commission in cases involving rates, facilities, service, or other affairs of railroads in this state, including forms of applications, complaints, answers, orders, and notices of hearing; the conducting of hearings; compelling the attendance and testimony of witnesses and the production of records, data, and information; and the preparation, recording, and serving of reports and orders of the commission, shall be followed and shall govern in all proceedings and investigations before the commission in cases arising in connection with the performance by the commission of its duties or the exercise of its jurisdiction under the provisions of this chapter.

History: En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Public transportation issues — Department of Transportation to represent state, 60-21-101.

Railroads, Title 69, ch. 4.

69-12-205. Rules to reflect differences between carrier classes. All rules in relation to schedules, service, tariffs, rates, facilities, accounts, and reports must have due regard for the differences existing between Class A, Class B, Class C, Class D, and Class E motor carriers, as defined in this chapter, and must be just, fair, and reasonable to the classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons or property, or both, the commission shall take into consideration the kind and character of service to be performed, the public necessity of the service, and the effect of the tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 205, L. 1963; amd. Sec. 1, Ch. 182, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103(c); amd. Sec. 1, Ch. 352, L. 1979; amd. Sec. 4, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "Class D", inserted "and Class E"; and made minor changes in style. Amendment effective April 20, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Classification and motor carrier certificates, Title 69, ch. 12, part 3.

69-12-206. Investigations by commission. (1) Any investigation, inquiry, or hearing which the commission has power to undertake or to hold under the provisions of this chapter may be undertaken or held by or before any member of the commission or by and before any agent or examiner of the commission designated for the purpose by the commission. Every finding, order, or decision made by a member of the commission or agent or examiner of the commission so designated, together with a statement in writing of the reasons therefor (which statement must be included in the finding, order, or decision, pursuant to the investigation, inquiry, or hearing) when approved and confirmed by the commission and ordered filed in its office shall be considered the finding, order, or decision of the commission.

(2) An agent or examiner of the commission designated as aforesaid may administer oaths, examine witnesses, and receive evidence.

History: En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(2).

Cross-References

Investigation of operation under carrier agreement, 69-12-603.

69-12-207. Temporary operating authority. (1) To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, in its discretion upon affidavits or such other evidence as it may deem sufficient and without hearings or other proceedings, grant temporary authority for such service by a common carrier by motor vehicle or a contract carrier by motor vehicle, as the case may be. Such affidavits or other evidence as the commission may determine must accompany the application for temporary authority. The affidavits or other evidence must specify in detail the reason for supporting the application for temporary authority and the term within which the temporary authority would be required.

(2) Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for not more than 90 days. Temporary authority initially granted pursuant to the provisions hereof may be extended by the commission without hearings or other proceedings, but in no case shall a grant of temporary authority with extensions exceed an aggregate of 120 days.

(3) Neither the granting of temporary authority nor operation thereunder shall create any presumption that corresponding permanent authority will be granted thereafter. Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this chapter and to the rules and requirements of the commission thereunder.

History: En. Sec. 1, Ch. 148, L. 1971; amd. Sec. 1, Ch. 231, L. 1973; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-131.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

69-12-208. Provisions for bus service. The commission, after 10 days' notice and public hearing, shall have the power to compel all motor carrier bus lines under its jurisdiction to furnish, provide, and maintain such service, instrumentalities, equipment, facilities, and time schedules as shall promote the safety, health, comfort, and convenience of its passengers and employees and the public and as shall in all respects be adequate, efficient, just, and reasonable.

History: En. Sec. 2, Ch. 143, L. 1943; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-129.

69-12-209. Enforcement procedures. (1) Orders and final determinations of the commission in all proceedings pursuant to the provisions of this chapter shall be enforced in the manner provided for the enforcement of orders of the commission by the provisions of parts 1, 3, 4, and 8 of chapter 14.

(2) If any motor carrier shall operate in violation of the provisions of this chapter or shall fail or neglect to obey any lawful order of the commission, the commission or any party injured may apply to any court of competent jurisdiction, in any county where such motor carrier is engaged in business, for the enforcement of this chapter or such order. The court shall enforce obedience thereto by writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier or its officers, agents, employees, or representatives from further violation of this chapter or such order or to enjoin upon it or them obedience to the same.

History: **En. Sec. 14, Ch. 184, L. 1931; re-en. Sec. 3847.14, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-114(part).**

Cross-References

Injunctions, Title 27, ch. 19.

Part 3

Classification and Motor Carrier Certificates

69-12-301. Classification of motor carriers. (1) Motor carriers are divided into five classes to be known as:

(a) Class A motor carriers;
(b) Class B motor carriers;
(c) Class C motor carriers;
(d) Class D motor carriers; and
(e) Class E motor carriers.

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers include all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers include all motor carriers operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers include all motor carriers operating motor vehicles transporting (including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter, and recyclables.

(6) Class E motor carriers include all motor carriers operating motor vehicles transporting logs if the renumeration is fixed in and transportation services are furnished under a written contract or agreement.

History: **En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 3, Ch. 341, L. 1991; amd. Sec. 5, Ch. 481, L. 1991.**

Compiler's Comments

1991 Amendments: Chapter 341 in (5) expanded Class D motor carrier classification to include transportation of recyclables.

Chapter 481 in (1) increased number of classes from four to five; inserted (1)(e) providing for Class E motor carriers; inserted (6) to include in Class E all motor carriers operating motor vehicles transporting logs under certain circumstances; and made minor changes in style. Amendment effective April 20, 1991.

Cross-References

Fee, 69-12-423.

69-12-302. Class C contract requirements. (1) A Class C motor carrier may operate under no more than six contracts that are effective at any given time, and each contract must be effective for a minimum of 180 days. Before transportation service may commence, pertinent contract information must be furnished to the commission for each contract on forms prescribed by the commission. The commission shall retain a duplicate of the information in its files, and a copy of the form, confirmed by the commission, must be kept in the cab of the motor carrier when operating under that contract.

(2) All Class C motor carriers shall annually submit to the commission the names and addresses of all persons, corporations, or other legal entities with whom the Class C carrier has executed a contract, charter, agreement, or undertaking for the distribution, delivery, or collection of wares, merchandise, or commodities or for transporting persons.

(3) The provisions of this section do not apply to solid waste contractors, transportation of recyclables, household goods carriers, or house movers, as defined by the department of public service regulation, or any carrier whose authority is limited to the pickup and delivery of property and is confined by certificate to transportation within a distance of 50 miles or less from a particular location. A carrier whose property authority is incidental to the transportation of persons is not included in the exemption under this subsection.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 24, L. 1979; amd. Sec. 1, Ch. 393, L. 1987; amd. Sec. 1, Ch. 203, L. 1991; amd. Sec. 2, Ch. 341, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 203, in (1), at end of first sentence after "180 days", deleted "is considered to be operating as a Class B motor carrier"; and made minor changes in style. Amendment effective March 27, 1991.

Chapter 341 in (3) included transportation of recyclables in exemption from provisions of section.

Cross-References

Movement of structures, Title 69, ch. 4, part 6.

69-12-303 through 69-12-310 reserved.

69-12-311. Class A motor carrier certificate. (1) No Class A motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate declaring that public convenience and necessity require such operation.

(2) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highway or highways over which and the fixed termini between which or the regular route or routes over which it intends to operate;

(c) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(d) the proposed time schedule;

(e) a schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers;

(f) a complete and detailed description of the property proposed to be devoted to the public service;

(g) a detailed statement showing the assets and liabilities of such applicant; and

(h) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee to be set by rule of the commission.

History: En. Sec. 8, Ch. 184, L. 1931; re-en. Sec. 3847.8, R.C.M. 1935; amd. Sec. 22, Ch. 121, L. 1965; amd. Sec. 1, Ch. 243, L. 1974; amd. Sec. 1, Ch. 472, L. 1977; R.C.M. 1947, 8-108; amd. Sec. 11, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fee, 69-12-423.

69-12-312. Class B motor carrier certificate. (1) No Class B motor carrier shall operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operations.

(2) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

(a) name and address of the applicant and the names and addresses of its officers, if any;

(b) the kind of transportation, whether passenger, freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic;

(c) the locality and character of operations to be conducted;

(d) a schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers;

(e) a complete and detailed description of the property proposed to be devoted to the public service;

(f) a detailed statement showing the assets and liabilities of such applicant; and

(g) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a filing fee to be set by rule of the commission.

History: En. Sec. 9, Ch. 184, L. 1931; re-en. Sec. 3847.9, R.C.M. 1935; amd. Sec. 23, Ch. 121, L. 1965; amd. Sec. 2, Ch. 243, L. 1974; amd. Sec. 2, Ch. 472, L. 1977; R.C.M. 1947, 8-109; amd. Sec. 12, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Fee, 69-12-423.

69-12-313. Class C motor carrier certificate. (1) No Class C motor carrier, except any Class C motor carrier operating pursuant to the terms and conditions of a contract as provided in 69-12-324, shall operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities or for the transportation of persons on any public highway in this state without first having obtained from the commission, under the provisions of this chapter, a certificate that public convenience and necessity require such operation.

(2) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the public highways or highways over which and the fixed termini between which or the route or routes over which it intends to operate, if the same are fixed, or the particular city, town, station, or locality from and/or to which the applicant intends to operate;

(c) the kind of transportation and the character of the goods, wares, merchandise, or commodities to be distributed, delivered, or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery, or collection; and

(d) such other or additional information as the commission may by order require.

(3) Such application shall be accompanied by a fee to be set by rule of the commission.

(4) The submission of a Class C motor carrier application must be accompanied by the names and addresses of any person, corporation, or other legal entity with whom the applicant has executed a contract for the distribution, delivery, or collection of wares, merchandise, or commodities or transporting persons. Such contracts must be in writing, executed by the parties and submitted to the commission for examination.

History: (1) thru (3)En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 472, L. 1977; Sec. 8-110, R.C.M. 1947; (4)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974;

amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-110(1), 8-111(part); amd. Sec. 13, Ch. 588, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Fee, 69-12-423.

69-12-314. Class D motor carrier certificate. (1) Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the commodities described in 69-12-301(5). Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class D motor carrier certificate or operate as a Class D motor carrier unless the motor carrier actually engages in the transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter on a regular basis as part of the motor carrier's usual business operation.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(part); amd. Sec. 1, Ch. 387, L. 1979.

Cross-References

Required records and reports, 69-12-407.

Fee, 69-12-423.

69-12-315. Class E motor carrier certificate. (1) Class E motor carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of logs. Class E motor carriers, when applying for new or additional authority, shall file an application with the commission in accordance with the requirements of this chapter and the rules of the commission.

(2) A motor carrier may not possess a Class E motor carrier certificate or operate as a Class E motor carrier unless the motor carrier actually engages in the transportation of logs on a regular basis as part of the motor carrier's usual business operation.

(3) For the period between October 1, 1991, and October 1, 1992, a person or corporation engaged in the business of transporting logs in Montana at any time between April 1, 1990, and October 1, 1991, is not subject to subsection (1) and must be granted a statewide Class E motor carrier certificate upon applying to the commission and submitting proof that the person was engaged in transporting logs between April 1, 1990, and October 1, 1991. The commission shall develop and make available the necessary forms. *(Subsection (3) terminates October 1, 1992—sec. 16(3), Ch. 481, L. 1991.)*

History: En. Secs. 6, 9, Ch. 481, L. 1991.

Compiler's Comments

Effective Date: Section 16(1), Ch. 481, L. 1991, provided that this section is effective on passage and approval. Approved April 20, 1991.

Termination Date: Section 16(3), Ch. 481, L. 1991, provided: "[Section 9] [69-12-315(3)] terminates October 1, 1992."

69-12-316 through 69-12-320 reserved.

69-12-321. Hearing on application for motor carrier certificate. (1) Upon the filing of an application by a Class A, Class B, Class C, Class D, or Class E motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of a request for a transfer of authority, the commission shall give notice of the filing of the application to any interested party. The commission shall fix a time and place for a hearing on the application whenever a protest or a request for a hearing is received. The hearing must be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.

(2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or boards of any county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, Class D, or Class E motor carrier for a certificate may be disallowed without a public hearing when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation.

History: Ap. p. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; Ap. p. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; R.C.M. 1947, 8-111(part), 8-111.1(part); amd. Sec. 1, Ch. 25, L. 1979; amd. Sec. 1, Ch. 55, L. 1979; amd. Sec. 14, Ch. 588, L. 1983; amd. Sec. 11, Ch. 481, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 481 in (1) and (4) inserted reference to Class E motor carrier; and made minor changes in style. Amendment effective April 20, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

69-12-322. Notice of hearing. (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall cause a copy of the petition and notice of hearing to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of the certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of the hearing must be published:

(a) in the legal advertising section of a local newspaper or newspapers determined by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C or Class E authority and geographically limited Class B authority; and

(b) in appropriate newspapers determined by the commission to have sufficient statewide circulation in the case of applications for Class A authority and geographically broad contemplated Class B authority.

History: En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; R.C.M. 1947, 8-111(part); amd. Sec. 2, Ch. 55, L. 1979; amd. Sec. 12, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(a) inserted reference to Class E motor carrier authority; and made minor changes in style. Amendment effective April 20, 1991.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

69-12-323. Decision on application. (1) The commission must issue, within 180 days from and after the date of the completed filing of said application, its finding, order, or decision on said application and the evidence presented in support thereof at the time of said hearing. The commission may extend the foregoing time for decision to a date requested by the applicant.

(2) (a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

(b) For purposes of Class D certificates, a determination of public convenience and necessity may include a consideration of competition.

(3) The commission may issue the certificate as prayed for or issue it for the partial exercise only of the privilege sought and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier as provided in this part, such certificate shall continue in force until terminated by the commission for cause as herein provided or until terminated by the owner's failure to comply with 69-12-402.

History: (1)En. Sec. 1, Ch. 102, L. 1955; amd. Sec. 3, Ch. 69, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-111.1, R.C.M. 1947; (2)En. Sec. 11, Ch. 184, L. 1931; re-en. Sec. 3847.11, R.C.M. 1935; amd. Sec. 1, Ch. 101, L. 1955; amd. Sec. 2, Ch. 69, L. 1971; amd. Sec. 1, Ch. 339, L. 1973; amd. Sec. 4, Ch. 243, L. 1974; amd. Sec. 3, Ch. 315, L. 1974; Sec. 8-111, R.C.M. 1947; (3)En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; Sec. 8-112, R.C.M.

1947; R.C.M. 1947, 8-111(part), 8-111.1(part), 8-112(part); amd. Sec. 1, Ch. 54, L. 1979; amd. Sec. 1, Ch. 76, L. 1983.

Cross-References

Revocation of certificate, 69-12-327.

69-12-324. Special provisions when federal or state contract involved. (1) The presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state government contracts. Subject to the provisions of this section, a transportation movement is considered to be:

(a) the transportation for hire of persons between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the United States government or an agency or department thereof; or

(b) the transportation for hire of solid waste between two points within the state by a motor carrier pursuant to the terms of a written contract between the carrier and the state government or an agency or department thereof.

(2) The Class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state government contract may be issued by the commission upon receipt of an executed copy of the United States government or state government contract. The certificate of public convenience and necessity may be issued thereafter without requiring the commission to fix a time and place for public hearing.

(3) The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state government contract, is authorized only for the duration of the United States government or state government contract concerned. The certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state government contract.

History: En. Sec. 10, Ch. 184, L. 1931; re-en. Sec. 3847.10, R.C.M. 1935; amd. Sec. 24, Ch. 121, L. 1965; amd. Sec. 1, Ch. 69, L. 1971; amd. Sec. 3, Ch. 243, L. 1974; amd. Sec. 1, Ch. 179, L. 1975; amd. Sec. 3, Ch. 476, L. 1977; R.C.M. 1947, 8-110(2); amd. Sec. 15, Ch. 588, L. 1983; amd. Sec. 2, Ch. 178, L. 1985.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-325. Transfer of certificate or privilege. Any right, privilege, or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred, and inherited as other property only by the authorization of the commission.

History: En. Sec. 12, Ch. 184, L. 1931; re-en. Sec. 3847.12, R.C.M. 1935; R.C.M. 1947, 8-112(part).

69-12-326. Lease of certificate. (1) An authorized carrier operating within the state may lease its certificate or any integral segment thereof to another carrier only by approval of the commission. The contract or lease under which the certificate is leased must be in writing and approved by the commission prior to any operation under the certificate. The contract or lease must specify:

(a) the period for which a certificate is to be leased, which shall not be less than 30 days;

(b) the compensation to be paid;

(c) the time or date upon which the lease will commence and terminate; and

(d) the signatures of the parties thereto.

(2) Operation under the certificate is prohibited until approved by the commission in writing. During the period of the contract or lease, transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner (lessor) are prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.3.

69-12-327. Revocation of certificate — right of review. (1) If it appears that a certificate holder is violating or refusing to observe any of the commission's orders or rules or any provision of Title 69, as amended, the commission may issue an order to the certificate holder to show cause why the certificate should not be revoked. If the certificate holder fails to appear to show cause as ordered by the commission, the certificate may be revoked without a hearing. If the holder does appear to show cause, the commission may:

(a) dismiss the proceeding, notifying the holder that the certificate is not revoked; or

(b) hold a hearing on the question of revocation, notifying the holder of the time and place for the hearing.

(2) The holder of any such certificate or privilege shall have all rights of rehearing and review as to such order of the commission as is provided in this chapter.

History: En. Sec. 7, Ch. 184, L. 1931; re-en. Sec. 3847.7, R.C.M. 1935; R.C.M. 1947, 8-107; amd. Sec. 1, Ch. 31, L. 1979.

Cross-References

Effect of failure to pay compensation, fees, or charges, 69-12-422.

69-12-328 through 69-12-330 reserved.

69-12-331. Special provisions relating to transportation of buildings. A certificate that permits the transportation of a building other than a mobile home, as defined in 15-1-101, from its existing foundation to a new location must permit transportation throughout the state and may not restrict transportation to a particular region of the state.

History: En. Sec. 1, Ch. 593, L. 1979; amd. Sec. 1, Ch. 173, L. 1991.

Compiler's Comments

1991 Amendment: Deleted (2) applying the provisions of this section only to certain motor carriers in business on July 1, 1977; deleted (3) requiring the Commission to adopt rules to implement subsection (1); and made minor changes in style. Amendment effective March 26, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-12-332 reserved.

69-12-333. Contracts for transportation of logs by Class E motor carriers — determination of rates — penalty. (1) A person or corporation proposing to contract with a Class E motor carrier for the intrastate transportation of logs shall at the time of the initial contact regarding a specific job inform the carrier of the time of payment and of any special conditions connected with the job. Before the carrier picks up the load, the information required under subsection (2) must be furnished in writing to the carrier on a form developed by the commission or on a form containing the same information provided by the person proposing the contract.

(2) The commission shall by rule prescribe the provisions it determines are necessary for Class E motor carrier contracts, including but not limited to the rate to be charged and its method of calculation, the time and method of payment, any special conditions of loading or routes demanded by the shippers, and the time of performance.

(3) A person, corporation, or motor carrier violating this section or a provision of a contract described in this section is subject to a civil penalty, to be collected and deposited in the general fund by the commission after notice and hearing, in an amount not less than $25 or more than $500 for the first violation and not less than $25 or more than $1,000 for each subsequent violation.

History: En. Sec. 7, Ch. 481, L. 1991.

Compiler's Comments

Effective Date: Section 16(1), Ch. 481, L. 1991, provided that this section is effective on passage and approval. Approved April 20, 1991.

69-12-334. Form for contracts for transportation of logs. The commission shall develop a form that may be used by persons contracting with Class E motor carriers as provided in 69-12-333. The form must include space for noting the rate and time of payment and for listing any special conditions that may be included in the contract. The commission shall make the forms available to persons proposing to contract with a Class E motor carrier.

History: En. Sec. 8, Ch. 481, L. 1991.

Compiler's Comments

Effective Date: Section 16(1), Ch. 481, L. 1991, provided that this section is effective on passage and approval. Approved April 20, 1991.

69-12-335. Transportation of logs under Class E authority only. A Class A, Class B, Class C, or Class D motor carrier may not transport logs without first obtaining Class E authority.

History: En. Sec. 10, Ch. 481, L. 1991.

Compiler's Comments

Effective Date: Section 16(1), Ch. 481, L. 1991, provided that this section is effective on passage and approval. Approved April 20, 1991.

Part 4

Requirements for Motor Carriers

69-12-401. Compliance with state law. It shall be unlawful for any corporation or person, its or his officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this chapter.

History: En. Sec. 2, Ch. 184, L. 1931; re-en. Sec. 3847.2, R.C.M. 1935; amd. Sec. 1, Ch. 172, L. 1973; amd. Sec. 1, Ch. 145, L. 1974; amd. Sec. 1, Ch. 138, L. 1977; R.C.M. 1947, 8-102(b).

69-12-402. Compliance with commission rules. No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules of the commission as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the commission may require for:

(1) the prompt payment of all compensation or fees due the state under the provisions of this chapter; and

(2) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the commission to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants.

History: En. Sec. 13, Ch. 184, L. 1931; re-en. Sec. 3847.13, R.C.M. 1935; R.C.M. 1947, 8-113.

Cross-References

Liability, Title 27, ch. 1, part 7.
Suretyship, Title 28, ch. 11, part 4.
Motor vehicle financial responsibility, 61-6-109.

69-12-403. Discontinuance of service. No Class A or Class B motor carrier shall abandon or discontinue any service established under this chapter without an order of the commission therefor.

History: En. Sec. 5, Ch. 184, L. 1931; re-en. Sec. 3847.5, R.C.M. 1935; R.C.M. 1947, 8-105.

69-12-404. Suspension of intrastate operating authority by petition. (1) Every motor carrier as defined within this chapter may petition the commission in writing to suspend its intrastate operating authority for a period not to exceed 6 months. An additional 6 months' suspension may be requested and granted, but no other. Such suspension may be granted by the commission upon a showing of present absence of public convenience and necessity or other showing of matters affecting motor carrier transportation.

(2) The suspension of any intrastate operating authority of any carrier as provided for in subsection (1) for a period of 12 consecutive months shall be deemed to establish a prima facie presumption of absence of public convenience and necessity. If after notice and hearing the carrier is unable to

prove the existence of public convenience and necessity or existing demand for the transportation service, the commission is authorized to cancel such certificate of public convenience and necessity.

History: (1)En. 8-107.1 by Sec. 1, Ch. 173, L. 1973; Sec. 8-107.1, R.C.M. 1947; (2)En. 8-107.2 by Sec. 1, Ch. 236, L. 1973; Sec. 8-107.2, R.C.M. 1947; R.C.M. 1947, 8-107.1, 8-107.2.

Cross-References

Presumptions, Rule 301, M.R.Ev. (see Title 26, ch. 10).

69-12-405. Transportation of livestock. (1) Except as provided in subsection (2), a person, corporation, association or its officers, agents, employees, or servants may not operate any motor vehicle or combination of vehicles in the commercial transportation of livestock for hire without having first obtained a Class B certificate of public convenience and necessity from the commission.

(2) (a) The provisions of this section shall not apply to the transportation of livestock by motor carrier by a bona fide farmer, rancher, or raiser of livestock in his own vehicle or vehicles or when such farmer, rancher, or raiser of livestock provides transportation for the livestock of another farmer, rancher, or raiser of livestock between farm and farm, ranch and ranch, or pasture and pasture or to a point.

(b) Any commercial transportation movement of livestock in any motor vehicle having a cargo bed of 22 feet in length or less shall be deemed exempt from the provisions of this section.

History: Ap. p. Sec. 2, Ch. 275, L. 1971; Sec. 8-101.1, R.C.M. 1947; Ap. p. Sec. 3, Ch. 275, L. 1971; amd. Sec. 1, Ch. 233, L. 1973; amd. Sec. 2, Ch. 315, L. 1974; Sec. 8-101.2, R.C.M. 1947; R.C.M. 1947, 8-101.1, 8-101.2.

Cross-References

Application of motor vehicle traffic regulation law, 61-8-101.

Application of motor vehicle equipment regulation law, 61-9-101.

Liability of inland carriers for loss, 69-11-421.

Permissible limitations on liability, 69-11-422.

Scope of chapter — exemptions, 69-12-102.

Transportation of livestock, Title 81, ch. 3, part 2.

69-12-406. Restriction on transportation of certain waste. Except as provided in 69-12-324, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state. This restriction does not apply to recyclables.

History: En. 8-102.1 by Sec. 2, Ch. 138, L. 1977; R.C.M. 1947, 8-102.1(part); amd. Sec. 16, Ch. 588, L. 1983; amd. Sec. 4, Ch. 341, L. 1991.

Compiler's Comments

1991 Amendment: Inserted last sentence exempting recyclables from carrier restrictions.

Cross-References

Waste and litter control, Title 75, ch. 10.

69-12-407. Records and reports. (1) All records, books, accounts, and files of every Class A, Class B, Class C, Class D, and Class E motor carrier in this state, so far as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A, Class B, Class C, Class D, and Class E motor carriers, and every motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system, insofar as possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, every motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission information it requires in order to perform its duties under this chapter.

(3) In addition to other reporting requirements, the commission shall require the holder of a Class D motor carrier certificate to provide sufficient information to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314.

(4) In addition to other reporting requirements, the commission shall require the holder of a Class E motor carrier certificate to demonstrate that the carrier is entitled to possess the Class E motor certificate under the requirements of 69-12-315.

History: En. Sec. 18, Ch. 184, L. 1931; re-en. Sec. 3847.18, R.C.M. 1935; amd. Sec. 1, Ch. 232, L. 1973; amd. Sec. 4, Ch. 472, L. 1977; R.C.M. 1947, 8-118; amd. Sec. 1, Ch. 353, L. 1979; amd. Sec. 2, Ch. 387, L. 1979; amd. Sec. 13, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in two places, inserted reference to Class E motor carrier; inserted (4) requiring a Class E motor carrier to demonstrate entitlement to certification; and made minor changes in style. Amendment effective April 20, 1991.

Cross-References

Fee, 69-12-423.

Maintenance of records, 69-12-601.

69-12-408. Identification of ownership of certain large motor vehicles. (1) (a) A person may not operate a motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds upon the highways of the state unless there is displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name or trade name and city and state of or the name or trade name and the public service commission, interstate commerce commission, or department of transportation number of the person or corporation under whose jurisdiction the vehicle or vehicles is or are being operated.

(b) The display of name must be in letters in sharp contrast to the background and in size, shape, and color readily legible in daylight from a distance of 50 feet while the vehicle is not in motion. The display must be kept and maintained to remain legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, prepared so that it meets the identification and legibility requirements of this section.

(2) This section does not apply to motor vehicles being transported to dealers from point of manufacture or from one dealer to another or being demonstrated to a prospect or delivered to a buyer from a dealer or a manufacturer.

History: (1)En. Sec. 1, Ch. 133, L. 1963; Sec. 53-801, R.C.M. 1947; (2)En. Sec. 2, Ch. 133, L. 1963; Sec. 53-802, R.C.M. 1947; (3)En. Sec. 3, Ch. 133, L. 1963; Sec. 53-803, R.C.M. 1947; R.C.M. 1947, 53-801, 53-802, 53-803; amd. Sec. 1, Ch. 160, L. 1991.

Compiler's Comments

1991 Amendment: In (1) (a), near middle, substituted "city and state of or the name or trade name and the public service commission, interstate commerce commission, or department of transportation" for "address or M.R.C. or I.C.C. certificate"; deleted (3) that was a misdemeanor penalty clause; and made minor changes in style. Amendment effective March 25, 1991.

Cross-References

Gross vehicle weight licensing requirements, Title 61, ch. 10, part 2.

69-12-409 through 69-12-420 reserved.

69-12-421. Annual fee for motor carriers. (1) Except as provided in subsection (2), in addition to all of the licenses, fees, or taxes imposed upon motor vehicles in this state and in consideration of the use of the public highways of this state, every motor carrier shall, at the time of the issuance of a certificate and annually thereafter, on or between October 1 and the following January 31, pay to the public service commission of Montana a fee set by rule of the commission for every motor vehicle operated by the carrier over or upon the public highways of this state.

(2) (a) A motor carrier engaged in seasonal operations only, where its operations do not extend continuously over a period of not to exceed 6 months in any calendar year, shall only be required to pay compensation and fees in a sum equal to one-half of the compensation and fees herein provided.

(b) The compensation and fees herein imposed shall not apply to motor vehicles maintained and used by a motor carrier as standby or emergency equipment. The commission shall have the power and it is hereby made its duty to determine what motor vehicles shall be classed as standby or emergency equipment.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(a); amd. Sec. 17, Ch. 588, L. 1983.

Cross-References

Exemption of municipality from fees under this section — operation of municipal busline, 7-14-4403.

Motor vehicle taxes and fees, Title 61, ch. 3, part 5.

69-12-422. Effect of failure to pay compensation, fees, or charges. (1) Upon the failure of any motor carrier to pay such compensation when due, the commission may in its discretion revoke the carrier's certificate or privilege, and no carrier whose certificate or privilege is so revoked shall again be authorized to conduct such business until such compensation shall be paid.

(2) All compensation, fees, or charges imposed and accruing under the provisions of this chapter shall be a lien upon all property of the motor carrier

used in its operations under this chapter. Said lien shall attach at the time the compensation, fees, or charges become due and payable and shall have the effect of an execution duly levied on such property of the motor carrier and shall so remain until said compensation, fees, or charges are paid or the property sold for the payment thereof.

History: En. Sec. 16, Ch. 184, L. 1931; re-en. Sec. 3847.16, R.C.M. 1935; amd. Sec. 1, Ch. 473, L. 1973; R.C.M. 1947, 8-116(c), (d).

Cross-References

Exemption of municipality from fees under this section — operation of municipal busline, 7-14-4403.

Lien of carrier, 30-7-307.

Enforcement of carrier's lien, 30-7-308.

Revocation of certificate, 69-12-327.

Liens, Title 71, ch. 3.

69-12-423. Fees to be charged by commission. (1) The public service commission may, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, applications, and supplements not provided by law to be furnished free of charge.

(2) The commission shall require and receive an additional sum to be set by the commission to pay the cost of publishing such notice as may be required by this chapter.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce.

History: En. Sec. 1, Ch. 100, L. 1935; re-en. Sec. 3847.26, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1947; amd. Sec. 1, Ch. 67, L. 1971; amd. Sec. 4, Ch. 315, L. 1974; amd. Sec. 5, Ch. 472, L. 1977; R.C.M. 1947, 8-126(part); amd. Sec. 2, Ch. 500, L. 1979; amd. Sec. 18, Ch. 588, L. 1983.

Cross-References

Fees, 69-1-114.

Part 5

Ratemaking Requirements

69-12-501. Rate schedules to be maintained. (1) Every Class A or B motor carrier holding a certificate must maintain on file with the commission a full and complete schedule of its rates, fares, charges, classifications, and rules of service and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file and approved on March 7, 1961, shall remain in full force and effect until changed or modified by the commission or by the carrier with the approval of the commission.

(2) No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the commission. The commission shall prescribe rules providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: **En. Sec. 2, Ch. 201, L. 1961; R.C.M. 1947, 8-104.2.**

69-12-502. Prohibition on deviation from rate schedules. It shall be unlawful for any Class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge, or fare than that fixed by the commission for the transportation service provided. When maximum or minimum rates have been established for any service provided by any Class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any Class A or B motor carrier or any Class C motor carrier subject to maximum or minimum rates to refund or remit, in any manner or by any device, any portion of the rates, fares, and charges required to be collected under the schedule of the Class A or B carrier on file with the commission or under the maximum or minimum rates established by the commission for the Class C carrier.

History: **En. Sec. 3, Ch. 201, L. 1961; R.C.M. 1947, 8-104.3.**

69-12-503. Rates to be reasonable and nondiscriminatory. (1) All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and nondiscriminatory. No motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, corporation, locality, or description of traffic, nor shall such motor carrier subject any particular person, company, corporation, locality, or description of traffic to any prejudice or disadvantage in any respect. Nothing herein provided shall prevent the commission from authorizing different rates or schedules of rates for service between the same places or between different points of origin and/or destination within the same places when such different rates are justified by the differing character of service to be rendered by the carrier to a shipper or consignee.

(2) The commission may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier. If the commission shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of service which shall be fair, just, reasonable, and nondiscriminatory and it shall order the affected motor carrier or carriers to conform to such modified schedule. Each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the commission.

History: **En. Sec. 4, Ch. 201, L. 1961; amd. Sec. 2, Ch. 182, L. 1971; R.C.M. 1947, 8-104.4.**

Cross-References

Illegal discrimination, Title 49, ch. 2.

69-12-504. Procedure to revise rate schedule. (1) No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the commission. Such changes or revisions shall be made by filing with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made, and by submitting at the same time testimony and exhibits supporting the requested change or revision and prepared by the motor carrier. Additional testimony or exhibits may be submitted before or during the hearing provided for in 69-12-505 and may be submitted after the hearing with the approval of the commission. The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require.

(2) The tariff sheets containing changes or revisions shall be filed with the commission at least 45 days before the proposed effective date. The change or revision shall be effective on the stated effective date unless disallowed or suspended by the commission prior to this date. However, the commission may, for good cause, allow any change or revision to become effective on less than 45 days' notice.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 94, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-12-505. Suspension of proposed rate revision — hearing. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the commission, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days. The order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date. The motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party, mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent, and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) (a) If all the protests are withdrawn and the commission finds the proposed increase justified, the commission may vacate the suspension and permit the proposed rates to become effective without a public hearing.

(b) Unless the suspension has been vacated, whenever the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of the proposed change or revision. Due notice shall be given for such hearing to all known interested or affected persons, and the same shall be allowed to appear and present evidence. Additional prepared testimony may be presented before or during the hearing and may also be submitted after the hearing with the permission of the commission.

(3) After considering the evidence presented at such hearing, the commission shall issue an order approving, denying, or modifying the proposed change or revision. Unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961; amd. Sec. 1, Ch. 235, L. 1973; R.C.M. 1947, 8-104.5(part); amd. Sec. 1, Ch. 89, L. 1979.

69-12-506 through 69-12-510 reserved.

69-12-511. Procedure to recover excess charges. (1) Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the commission may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made. Any such action must be brought within 2 years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier shall be admissible in evidence for the purpose of showing a waiver of the right given by this section.

(2) If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961; R.C.M. 1947, 8-104.6.

Cross-References

Costs, Title 25, ch. 10.

Part 6

Carrier Agreements

69-12-601. Carrier agreements. (1) Any carrier, as defined in 69-12-101, which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment) or rules pertaining thereto or procedures for the joint consideration, initiation, or establishment thereof may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement. The commission shall by order approve any agreement if approval thereof is not prohibited by 69-12-602. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports as may be prescribed by the commission. All such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(1), (2).

Cross-References

Records and reports required, 69-12-407.

69-12-602. Limitations on carrier agreements. The commission may not approve under 69-12-601 any agreement:

(1) between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in 69-12-601 and is limited to matters relating to the transportation under joint rates or over through routes;

(2) which it finds is an agreement with respect to pooling or division of traffic, service, or earnings;

(3) which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(3) thru (5).

69-12-603. Investigation of operation under agreement. The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under 69-12-601 or any terms or conditions upon which such approval was granted are not in conformity with 69-12-601 and 69-12-602 or whether any such terms or conditions are not necessary for the purpose of conformity with 69-12-601 and 69-12-602. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with 69-12-601 and 69-12-602 and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with 69-12-601 and 69-12-602 or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval or modifying terms and conditions may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(6).

69-12-604. Hearing required on matters relating to agreements. No order may be entered under 69-12-601 or 69-12-603 except after interested parties have been afforded reasonable opportunity for hearing.

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(7).

Cross-References

Hearings to be open, 69-3-104.

69-12-605. Relationship of carrier agreements and antitrust laws. (1) The parties to any agreement approved by the commission under 69-12-601 and other persons are, if the approval of such agreement is not prohibited by 69-12-602, hereby exempted from Montana antitrust laws with respect to such agreement, including Title 30, chapter 14, part 2, or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(2) Any action of the commission under 69-12-601 through 69-12-603 in approving an agreement, in denying an application for such approval, in terminating or modifying its approval of an agreement, in prescribing terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions shall be construed as having effect solely with reference to the applicability of subsection (1).

History: En. 8-103.4 by Sec. 1, Ch. 288, L. 1975; amd. Sec. 25, Ch. 518, L. 1977; R.C.M. 1947, 8-103.4(8), (9).

Cross-References

Price fixing — restraint of trade — preliminary injunction, 27-19-202, 30-14-205.

69-12-606 through 69-12-610 reserved.

69-12-611. Leasing of power equipment. (1) All Class A, Class B, Class C, Class D, and Class E motor carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) a provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;

(d) a provision that the lessee assumes full responsibility for all regulatory fees;

(e) the amount of compensation to be paid for use of the vehicle while under the lease and the method by which the compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each leased power unit must display in a conspicuous place on both sides of the vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: En. 8-103.1 by Sec. 1, Ch. 105, L. 1969; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-103.1; amd. Sec. 2, Ch. 352, L. 1979; amd. Sec. 1, Ch. 409, L. 1983; amd. Sec. 1, Ch. 190, L. 1985; amd. Sec. 14, Ch. 481, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning, inserted reference to Class E motor carriers; and made minor changes in style. Amendment effective April 20, 1991.

69-12-612. Interchange of equipment. (1) Common carriers authorized by the commission may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the commission by the carriers affected. To be approved by the commission, the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills, or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized, such equipment shall be operated only by the certificate holder over whose route such equipment is being operated.

(2) Interchange agreements between Class C contract carriers is prohibited.

History: En. 8-103.2 by Sec. 1, Ch. 106, L. 1969; R.C.M. 1947, 8-103.2.

Cross-References

Class C motor carrier certificate, 69-12-313.

CHAPTER 13

PIPELINE CARRIERS

Part 1 — General Provisions

69-13-101. Common carrier pipeline.
69-13-102. Scope of chapter — enforcement.
69-13-103. Right to construct pipelines.
69-13-104. Use of power of eminent domain.
69-13-105. Violations.

Part 2 — Role of Commission

69-13-201. Establishment of rates and operating rules.
69-13-202. Assumption of validity of commission orders.
69-13-203. Investigatory and enforcement authority of commission.

Part 3 — Requirements for Pipeline Carriers

69-13-301. Records and reports.
69-13-302. Connection and interchange facilities.
69-13-303. Prohibition of discrimination in rates or service.

Chapter Cross-References

Annual report to Department of Revenue, 15-23-301.

Report of shipment data on oil or gas, 15-36-104.

Financing statement — definitions and requirements, 30-9-409.

Relocation of utilities' facilities, 60-4-402.

Montana Major Facility Siting Act, Title 75, ch. 20.

Part 1

General Provisions

69-13-101. Common carrier pipeline. (1) The following are hereby declared to be common carriers and subject to the provisions of this chapter: every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatever:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products thereof by pipelines;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for transportation to or for the public for hire of crude petroleum, coal, or the products thereof, which pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

(2) The provisions of this chapter shall not apply to those pipelines which are limited in their use to the wells, stations, plants, and refineries of the owner and which are not a part of the pipeline transportation system of any common carrier, as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipeline transportation system.

History: **En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R.C.M. 1921; re-en. Sec. 3848, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963; R.C.M. 1947, 8-201.**

69-13-102. Scope of chapter — enforcement. (1) It is declared that the operation of these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the commission.

(2) It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R.C.M. 1921; re-en. Sec. 3849, R.C.M. 1935; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-202.

Cross-References

Attorney General, Title 2, ch. 15, part 5.

Injunctions, Title 27, ch. 19.

Investigatory and enforcement authority of Public Service Commission, 69-13-203.

69-13-103. Right to construct pipelines. (1) The right to lay, maintain, and operate pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such lines, or along, across, or under any public stream or highway in this state is hereby conferred upon all persons, firms, limited partnerships, joint-stock associations, or corporations coming within any of the definitions of common carrier pipelines as hereinbefore made. This right to run along, across, or over any public road or highway, as provided for, can only be exercised upon condition that the traffic thereon not be interfered with and that such road or highway be promptly restored to its former condition of usefulness. The restoration of the road or highway is subject also to the supervision of the county commissioners of the county in which said highway is situated.

(2) Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state by filing with the commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road in the laying of pipelines or telegraph or telephone lines along or across the same. Nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town except by express permission from the city or governing authority thereof.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).

69-13-104. Use of power of eminent domain. Every person, firm, corporation, limited partnership, joint-stock association, or association of any kind mentioned in this chapter, which shall have filed with the commission its acceptance of the provisions of this chapter, is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or authorization of his, its, or their common carrier pipeline. The manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads.

History: En. Sec. 3, Ch. 8, Ex. L. 1921; re-en. Sec. 3850, R.C.M. 1921; re-en. Sec. 3850, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-203(part).

Cross-References

Eminent domain, Title 70, ch. 30.

69-13-105. Violations. (1) Any common carrier as herein defined who shall violate any provisions of this chapter or who shall fail to perform any duty herein imposed or any valid order of the commission, when not stayed or suspended by order of court, shall be subject to a penalty of not less than $100 or more than $1,000 for each offense. Such penalty shall be recoverable at suit of the attorney general of Montana in the name of the state and for its use.

(2) For the willful violation of any of the provisions herein forbidding discrimination on the part of common carriers, it is hereby provided that the owners, officers, agents, or employees of such carriers who may be guilty thereof shall be deemed guilty of a misdemeanor. Each violation of any of such provisions shall be deemed a separate and distinct offense, and upon conviction thereof the party violating same shall be fined in a sum of not less than $50 or more than $1,000 and may be further punished by confinement in the county jail for not less than 10 days or more than 6 months.

(3) Actual damages may also be recovered by and for the use of any person, corporation, or association of persons against whom there shall have been an unlawful discrimination as herein defined. Such suit shall be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue.

History: En. Sec. 9, Ch. 8, Ex. L. 1921; re-en. Sec. 3856, R.C.M. 1921; re-en. Sec. 3856, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-209.

Cross-References

Attorney General, Title 2, ch. 15, part 5.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 2

Role of Commission

69-13-201. Establishment of rates and operating rules. (1) The commission shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules for the government and control of such common carriers in respect to their pipelines and receiving, transferring, and loading facilities. It shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject.

(2) No order establishing or prescribing rates and rules shall be made except after hearing and at least 10 days' and not more than 30 days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipeline or pipelines affected.

(3) In the event any rate shall be filed by any pipeline and complaint against the same or petition to reduce the same shall be filed by any shipper and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipeline shall have the right to reparation or reimbursement of all excess in transportation charges so paid, over and above the proper rate as finally determined, on all shipments made after the date of the filing of such complaint.

History: **En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R.C.M. 1921; re-en. Sec. 3851, R.C.M. 1935; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-204.**

Cross-References

Hearings to be open, 69-3-104.

69-13-202. Assumption of validity of commission orders. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: **En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).**

69-13-203. Investigatory and enforcement authority of commission. The commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: **En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).**

Cross-References

Investigatory powers of Consumer Counsel, 69-2-203.

Enforcement by Attorney General, 69-13-102.

Part 3

Requirements for Pipeline Carriers

69-13-301. Records and reports. (1) Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules as may be prescribed by said commission. The commission shall require them to make reports and may investigate their books and records kept in connection with such business.

(2) The commission shall require of such common carrier pipelines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipelines, of that held by them in storage for others, and of their unfilled storage capacity. No publicity shall be given by the commission to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipeline, but the commission in its discretion may make public the aggregate amounts held by all the pipelines making such reports and of their aggregate storage capacity.

History: En. Sec. 6, Ch. 8, Ex. L. 1921; re-en. Sec. 3853, R.C.M. 1921; re-en. Sec. 3853, R.C.M. 1935; amd. Sec. 5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-206(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

69-13-302. Connection and interchange facilities. (1) Every common carrier shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage with each like common carrier. The commission shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipelines whenever a necessity therefor exists, subject to such rates and regulations as may be made by the commission. Any such common carrier under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipeline.

(2) No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules to be prescribed by the commission, which they are hereby empowered and required to prescribe. The commission is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, for deduction therefor, and for the amount of deduction to be made for temperature, leakage, and evaporation.

(3) The recital herein of particular powers on the part of said commission shall not be construed to limit the general powers conferred by this chapter.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R.C.M. 1921; re-en. Sec. 3852, R.C.M. 1935; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 8-205(part).

69-13-303. Prohibition of discrimination in rates or service. (1) Except as provided in subsection (2), no such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished, service rendered, or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipeline shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or lesser compensation for any service rendered than from another for a like and contemporaneous service. Subject to the provisions of this chapter and the rules which may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum or coal delivered to it for transportation and shall so receive and transport the same and perform its other duties with respect thereto without discrimination.

(2) The provisions of subsection (1) shall not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the commission. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments exceeding 3,000 barrels of petroleum or the products thereof in any one day from any person, firm, corporation, or association of persons.

History: Ap. p. Sec. 7, Ch. 8, Ex. L. 1921; re-en. Sec. 3854, R.C.M. 1921; re-en. Sec. 3854, R.C.M. 1935; amd. Sec. 6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-207, R.C.M. 1947; Ap. p. Sec. 10, Ch. 8, Ex. L. 1921; re-en. Sec. 3857, R.C.M. 1921; re-en. Sec. 3857, R.C.M. 1935; amd. Sec. 7, Ch. 170, L. 1963; amd. Sec. 20, Ch. 315, L. 1974; Sec. 8-210, R.C.M. 1947; R.C.M. 1947, 8-207, 8-210.

Cross-References

Violations and penalties, 69-13-105.

CHAPTER 14

RAILROADS

Part 1 — Role of Commission

69-14-101. Definitions.
69-14-102. Application.
69-14-103. Interpretation.

69-14-104 through 69-14-110 reserved.
69-14-111. General supervision of railroads.
69-14-112. Investigatory authority.
69-14-113. Attendance and examination of witnesses.
69-14-114. Investigation of existing rates, classifications, and rules.
69-14-115. Investigation, enforcement, and report concerning railroad safety laws.
69-14-116. General protection of health and safety on railroads — rear-end telemetry systems — exemption for a caboose-equipped train.
69-14-117. Provision of adequate accommodations and service.
69-14-118. Maintenance of stations where several rail lines come together.
69-14-119. Connection of lines where several rail lines come together.
69-14-120. Violations of provisions relating to rails coming together.
69-14-121 through 69-14-130 reserved.
69-14-131. Enforcement duties of commission.
69-14-132. Legal assistance for commission.
69-14-133. Collection and disposition of penalties and forfeitures.
69-14-134. Court enforcement of commission actions.
69-14-135. General right to supreme court review.
69-14-136. Repealed.
69-14-137. Violations.

Part 2 — Requirements for Railroads

69-14-201. General duties of railroad corporation.
69-14-202. Duty to furnish shipping and passenger facilities.
69-14-203. Posting of information concerning train schedules.
69-14-204. Effect of refusal to accept passengers or property.
69-14-205. Accommodations for and care to be taken of passengers.
69-14-206. Rules for fare and conduct of passengers.
69-14-207. Expulsion of passengers refusing to pay fare.
69-14-208. Officers and employees of corporation to wear badges.
69-14-209. Issuance of passenger tickets.
69-14-210. Baggage checks.
69-14-211. Certificate of authority for ticket agents.
69-14-212. Unlawful sale of tickets.
69-14-213. Redemption of unused tickets.
69-14-214. Penalty for failure to redeem ticket.
69-14-215. Issuance of bills of lading by railroad station agents — penalty.
69-14-216. Restriction on contractual time limitations for notification of injury to transported livestock.
69-14-217 through 69-14-230 reserved.
69-14-231. Brake equipment.
69-14-232. Caboose required to be rear train car — size and equipment of caboose.
69-14-233. Failure of caboose equipment or maintenance.
69-14-234. Authorization for exemption from caboose provisions.
69-14-235. Application of caboose provisions.
69-14-236. Headlights and speedometers for locomotives.
69-14-237. Locomotive engines and electric motors to be marked with identifying numbers.
69-14-238. Equipment for track motor cars.
69-14-239. Operation of trains at grade crossings.
69-14-240. Duty to construct drains and ditches.
69-14-241 through 69-14-250 reserved.
69-14-251. Annual reports.
69-14-252. Accident reports.

Part 3 — Ratemaking Procedures

69-14-301. Commission powers related to ratemaking.
69-14-302. Treatment of unclassified charges.
69-14-303. Prohibition on rate discrimination.
69-14-304. Prohibition on tunnel charges.
69-14-305. Notice of proposed rate schedule.

69-14-306. Hearing on proposed rates.
69-14-307. Effective date of classifications and rates.
69-14-308. Publication and posting of notice of rate schedule.
69-14-309. Posting of rate schedule.
69-14-310. Failure of railroad to comply.
69-14-311. Procedure to alter classifications, rates, and rules of service.
69-14-312. Suspension of classification or rate change.
69-14-313. Fees to be charged by commission.
69-14-314 through 69-14-320 reserved.
69-14-321. Complaints of unjust rate discrimination.
69-14-322. Actions to recover excess charges.

Part 4 — Review of Commission Action

69-14-401. Court review of commission actions.
69-14-402. Lawsuit to determine reasonableness of commission actions.
69-14-403. Repealed.

Part 5 — Railroad Corporations

69-14-501. Organization of railroad corporation.
69-14-502. Organization of board of directors.
69-14-503. Capital stock of railroad corporations.
69-14-504. Payment for stock in installments.
69-14-505. Procedure in case of delinquency in payment of installments.
69-14-506. Increase of capital stock.
69-14-507. Authorization to issue securities.
69-14-508. Amendment of certificate of incorporation.
69-14-509. Record of amendment.
69-14-510. Additional amendments permitted.
69-14-511. Authorization to consolidate railroad corporations.
69-14-512. Procedure to consolidate.
69-14-513. Lease or purchase of other railroads.
69-14-514. Interrailroad business arrangements and out-of-state operations.
69-14-515. Acceptance of federal laws by railroad.
69-14-516 through 69-14-530 reserved.
69-14-531. Authorization to operate railroad.
69-14-532. Authority to plan, lay out, and construct rail lines.
69-14-533. Authority to enter land for survey purposes.
69-14-534. Change of location or grade.
69-14-535. Crossing of roads and streams.
69-14-536. Extension of rail lines into Montana.
69-14-537. Annual work and completion of road.
69-14-538. Railroads on Indian and military reservations.
69-14-539. Connections between lines of different railroads.
69-14-540 through 69-14-550 reserved.
69-14-551. Establishment of principal office.
69-14-552. Authority to hold and transfer property.
69-14-553. Acquisition and transfer of real estate.
69-14-554. Right-of-way through canyons.
69-14-555. Judgment liens against railroad property.
69-14-556. Authorization to borrow money and secure payment.
69-14-557. State not liable for obligations of railroad.
69-14-558. Transportation of passengers and property.
69-14-559. Maintenance of hotels in parks and along lines.
69-14-560. Regulation of rates of railroad corporations.
69-14-561. Regulation of railroad equipment.
69-14-562. Regulation of health and safety on railroads.
69-14-563. Construction and operation of telegraph line.

Part 6 — Railroad Highway Crossings

69-14-601. Definition of railroad company.
69-14-602. Construction and maintenance of railroad crossings outside of incorporated cities and towns.
69-14-603. Railroad crossings in unincorporated towns or villages.
69-14-604. Procedure to order construction of crossing.
69-14-605. Time for completion of crossing.
69-14-606. Role of public service commission with respect to crossings.
69-14-607. Overhead or underground crossings.
69-14-608. Court action to determine justness and reasonableness of commission order.
69-14-609. Extension of time to comply with order.
69-14-610. Effect of crossing provisions on liability of railroad.
69-14-611. Penalty for failure to comply with crossing order.
69-14-612. Reflectorized material on crossing signs required.
69-14-613 through 69-14-620 reserved.
69-14-621 through 69-14-625. Repealed.
69-14-626. Prohibition on extended obstruction of highway crossings.

Part 7 — Protection of Livestock and Agricultural Resources

69-14-701. Maintenance of fences.
69-14-702. Crossings to be maintained.
69-14-703. Placement of cattle guards.
69-14-704. Openings under trestles.
69-14-705. Application of provisions dealing with crossings.
69-14-706. Violation of crossing provisions.
69-14-707. Liability for negligent destruction of domestic animals.
69-14-708. Records of accidents involving animals.
69-14-709. Allowance of attorney's fee.
69-14-710. Tender or deposit of value of animal.
69-14-711. Payment of damages to department of livestock.
69-14-712. Disposition of carcass and hide of destroyed animals.
69-14-713. Violation of provisions dealing with injury to livestock.
69-14-714 through 69-14-720 reserved.
69-14-721. Control of fire hazard along right-of-way.
69-14-722. Maintenance of fireguards.

Part 8 — Loading Platforms and Spurs

69-14-801. Maintenance of loading platform by railroad.
69-14-802. Repealed.
69-14-803. Enlargement of platform.
69-14-804. Erection of scales.
69-14-805. Violations of loading platform provisions.
69-14-806 through 69-14-810 reserved.
69-14-811. Industrial and commercial spurs.
69-14-812. Power of commission with respect to sidetracks, stockyards, and chutes.
69-14-813. Removal of sidetrack, spur track, or loading facility.
69-14-814. Violations of sidetrack, spur track, or loading facility provisions.

Part 9 — Grain and Commodity Storage and Transportation

69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way.
69-14-902. Decision on application by railroad.
69-14-903. Court action to resolve differences.
69-14-904. Procedure in district court.
69-14-905. Right to supreme court review.
69-14-906. Payment of court costs.
69-14-907. Elevators and warehouses considered public.
69-14-908. Prompt payment of rental required.
69-14-909. Time limit for construction of elevator or warehouse.

69-14-910. Connection of railroad to elevator or warehouse.
69-14-911. Location of facility.
69-14-912 through 69-14-920 reserved.
69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in bulk.
69-14-922. Action by shipper to render cars suitable.
69-14-923. Demurrage not to accrue during repairs.
69-14-924. Liability of railroad for repairs.
69-14-925. Enforcement of provisions related to suitable cars for commodity shipments.
69-14-926 through 69-14-930 reserved.
69-14-931. Definitions.
69-14-932. First right to purchase or match offer — lease preference — negotiation process — exception.

Part 10 — Railroad Personnel

69-14-1001. Protection of employees affected by closure, consolidation, or centralization of station or other facility.
69-14-1002. Compensation of employees on removal of railroad division point or terminal.
69-14-1003. Railroad personnel as law officers.
69-14-1004. Penalty for intoxication while engaged in train operations.
69-14-1005. Medical aid for injured trainmen.
69-14-1006. Liability for death or injury to railroad employees.

Part 11 — Sale or Transfer of Railroad Line

69-14-1101. Definitions.
69-14-1102. Conditions for transfer of line of railroad.
69-14-1103. Notice of intent.

Chapter Cross-References

Railroad responsibility for costs of special improvement district around tracks, 7-12-2156.

Assessment of railroads, 15-8-301, 15-8-407, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Report of shipment data on oil or gas, 15-36-104.

Filing security interest when collateral is railroad equipment, 30-9-403.

Financing statement — definitions and requirements, 30-9-409.

Perfection of security interest in rolling stock, 30-9-409.

Securities issued by railroad exempt from securities registration, 30-10-104.

Service of process provisions for insurance not applicable to railroads engaged in interstate commerce, 33-1-614.

Right-of-way of railroad through cemetery prohibited, 35-21-409.

Employment of children by railroad prohibited, 41-2-101.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Relocation of utilities' facilities, 60-4-402.

Regulation of carriers, Title 60, ch. 11.

Penalty for interference with official railroad signs or signals, 61-8-713.

Eminent domain, Title 70, ch. 30.

Restriction on building railroad on public watershed, 75-6-112.

Contracts for use of railroads, 76-5-1109.

Easements for public uses, 77-2-101.

Assessment of railroads in drainage districts, 85-8-341, 85-8-342.

Part 1

Role of Commission

69-14-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Paralleling" means the situation where the main tracks of parallel lines of railroad or railway are not more than 2,000 feet apart when measured from center to center.

(2) "Railroad" means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies and sleeping-car companies.

(3) "Transportation" includes instrumentalities of shipment or carriage.

History: (1)En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3835, R.C.M. 1921; re-en. Sec. 3835, R.C.M. 1935; Sec. 72-157, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; Sec. 72-101.1, R.C.M. 1947; R.C.M. 1947, 72-101.1(part), 72-157; amd. Sec. 21, Ch. 43, L. 1979.

Cross-References

Railroad defined, 61-1-317, 69-12-101.

Railroad company defined, 69-14-601.

69-14-102. Application. This chapter applies to all persons, firms, or companies, incorporated or otherwise, that do business as common carriers on any of the lines of railroad in this state.

History: En. Sec. 11, Ch. 37, L. 1907; Sec. 4373, Rev. C. 1907; re-en. Sec. 3792, R.C.M. 1921; re-en. Sec. 3792, R.C.M. 1935; Sec. 72-114, R.C.M. 1947; amd. and redes. 72-101.1 by Sec. 12, Ch. 315, L. 1974; R.C.M. 1947, 72-101.1(part); amd. Sec. 22, Ch. 43, L. 1979.

69-14-103. Interpretation. This chapter shall not have the effect of releasing or waiving any right of action by the state or any person for any right, penalty, or forfeiture which may arise under any law of this state. All penalties accruing under this part are cumulative to each other, and a suit for or recovery of one is not a bar to the recovery of any other penalty.

History: En. Sec. 35, Ch. 37, L. 1907; Sec. 4398, Rev. C. 1907; re-en. Sec. 3817, R.C.M. 1921; re-en. Sec. 3817, R.C.M. 1935; R.C.M. 1947, 72-140; amd. Sec. 23, Ch. 43, L. 1979.

69-14-104 through 69-14-110 reserved.

69-14-111. General supervision of railroads. The commission shall have the general supervision of all railroads, express companies, car companies, sleeping-car companies, and freight and freight-line companies and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said commission and within its power and authority under the provisions of this chapter.

History: En. Sec. 16, Ch. 37, L. 1907; Sec. 4378, Rev. C. 1907; re-en. Sec. 3797, R.C.M. 1921; re-en. Sec. 3797, R.C.M. 1935; R.C.M. 1947, 72-119(part).

Cross-References

Public transportation issues — Department of Transportation to represent state, 60-21-101.

69-14-112. Investigatory authority. (1) The commission shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein or by the officers, agents, or employees thereof. The commission shall examine and inspect or cause to be examined and inspected all books, records, files, and papers of the persons and companies specified above, insofar as the same may be pertinent to any matter under investigation before the commission, and shall hear and take testimony in the progress of any inquiry or investigation authorized by this chapter.

(2) The commission, or some members thereof to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state resulting in death, injury to any person of such gravity as to require the attention of a physician or surgeon, or the destruction of property greater in value than $2,000. The testimony taken on any such hearing shall be transcribed and filed in the office of the commission.

History: En. Secs. 16, 16a, Ch. 37, L. 1907; Secs. 4378, 4379, Rev. C. 1907; re-en. Secs. 3797, 3798, R.C.M. 1921; re-en. Secs. 3797, 3798, R.C.M. 1935; R.C.M. 1947, 72-119(part), 72-120; amd. Sec. 24, Ch. 43, L. 1979.

Cross-References

Accident reports, 69-14-252.

69-14-113. Attendance and examination of witnesses. (1) The commission in making any examination or investigation provided for in this chapter may issue subpoenas for the attendance of witnesses by such rules as it may prescribe. Witness fees shall be the same as those provided for witnesses in civil actions before the district court, as provided in 26-2-501. However, no witness furnished with free transportation may receive mileage for the distance he may have traveled on such free transportation. No person may be excused from attending or testifying or producing any books, papers, documents, or any thing or things before any court or magistrate or commissioner or board upon any investigation, proceeding, or trial under the provisions of this chapter or for any violation of any of them upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture. No person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action, or investigation.

(2) (a) The process issued by the commission shall be under seal and extend to all parts of the state. The commission shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve process of courts of record or by any person appointed by the commission for such purpose.

(b) In the event the process issued by the commission is a subpoena for the attendance of a witness and he fails, neglects, or refuses to obey the same, the commission is hereby authorized to file a petition with any district court in the state, setting up the facts and the necessity of having the witness appear in the trial. The court shall thereupon summarily direct that a subpoena be issued out of the court requiring the attendance of any person as a witness before the court. The commission may thereupon examine such witness before the court, under oath, respecting any inquiry or investigation being made by the commission pursuant to the provisions of this chapter. The court shall likewise, when any petition is filed stating the necessity therefor, order the production by any person or corporation, for examination in the court, of any books, papers, records, or files necessary or pertinent to any inquiry or investigation then being made by the commission.

History: En. Secs. 10, 18, Ch. 37, L. 1907; Secs. 4372, 4381, Rev. C. 1907; re-en. Secs. 3791, 3800, R.C.M. 1921; re-en. Secs. 3791, 3800, R.C.M. 1935; R.C.M. 1947, 72-113, 72-122; amd. Sec. 25, Ch. 43, L. 1979; amd. Sec. 1, Ch. 87, L. 1979.

Cross-References

Subpoenas, Title 26, ch. 2.

69-14-114. Investigation of existing rates, classifications, and rules. The commission may, on its own motion or on the complaint by a shipper or other interested person, investigate any rate, classification, or rule approved and in effect for transportation of freight by any railroad within the state. The commission must, within 60 days after the commencement of an investigation on the commission's initiative or after the filing with such commission of a complaint by a shipper or other interested person, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation, or order made by said commission.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part).

Cross-References

Complaints of unjust rate discrimination, 69-14-321.

69-14-115. Investigation, enforcement, and report concerning railroad safety laws. (1) The commission shall:

(a) make inquiry into the observance by all railroads within this state of the laws of the United States and of Montana intended to safeguard the lives of the employees of persons or corporations engaged in operating the same;

(b) lay complaint before the proper state or federal officer, of any infraction of any of such laws; and

(c) prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

(2) The commission shall in an annual report set out what effort it has made to carry out the provisions of this section, with the result thereof, and in detail what steps it has taken to prosecute any violations of any such acts of which it has secured information. A copy of this annual report shall be mailed to the secretary of the department of transportation.

History: (1)En. Sec. 1, Ch. 115, L. 1913; re-en. Sec. 3819, R.C.M. 1921; re-en. Sec. 3819, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-142, R.C.M. 1947; (2)En. Sec. 2, Ch. 115, L. 1913; re-en. Sec. 3820, R.C.M. 1921; re-en. Sec. 3820, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1971; Sec. 72-143, R.C.M. 1947; R.C.M. 1947, 72-142, 72-143; amd. Sec. 26, Ch. 43, L. 1979; amd. Sec. 13, Ch. 125, L. 1983.

Cross-References

Annual reports required by Public Service Commission, 69-14-251.

Regulation of railroad health and safety — penalties, 69-14-562.

69-14-116. General protection of health and safety on railroads — rear-end telemetry systems — exemption for a caboose-equipped train. (1) The commission has full authority:

(a) after notice and hearing, to make and enforce rules providing for the installation on and equipment of trains, cars, or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to trainmen, enginemen, yardmen, maintenance-of-way employees, highway crossing watchmen, and clerical, platform, freight house, and express employees; and

(b) to inspect the safety appliances, sanitation facilities, and shelters and enforce regulations with regard to the provisions of subsection (1)(a).

(2) (a) Except as provided in subsection (4), the commission shall require a railroad operating trains in Montana to install a rear-end train telemetry system on all trains operating within mountain grade territory as geographically defined and designated by mile posts in the railroad's official timetable and operating rules on file with the commission.

(b) As used in this section, "telemetry system" means a radio transmitter and receiver system with one device placed on the last car of a train and a second device placed in the cab of the controlling locomotive. The second device must be visible to the locomotive engineer and capable of indicating through electronic communication with the device located on the last car of the train the following:

(i) brake pipe pressure at the rear of the train, in increments of 1 pound per square inch;

(ii) rear car movement;

(iii) operation or nonoperation of the rear marker light;

(iv) remaining battery life powering the telemetry system;

(v) interruption of the communication link between the device located on the last car of the train and the device located in the cab of the controlling locomotive; and

(vi) total distance travelled in feet by the locomotive to which the device is attached.

(c) A train operating in the area defined under this subsection (2) may not depart a crew change point or its local point of origin unless the train is equipped with the telemetry system required under the rules established pursuant to this section.

(d) Telemetry systems installed on a train in conformity with rules made under this section must be equipped so that an emergency application of brakes of the train can be initiated by activation of the device placed on the last car at the rear end of the train.

(e) Disciplinary action or other adverse administrative or employment action may not be instituted against a person who reports a violation of this subsection (2) or who acts to enforce the provisions of this subsection (2).

(3) The inspection, rules, and regulations required under subsections (1) and (2) must be compatible with any federal provisions and may not create an undue burden on interstate commerce.

(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

(a) meets the requirements of Montana law;

(b) is placed as the last car of the train; and

(c) is occupied by a member of the train crew.

History: En. Sec. 1, Ch. 136, L. 1909; re-en. Sec. 3827, R.C.M. 1921; re-en. Sec. 3827, R.C.M. 1935; amd. Sec. 1, Ch. 63, L. 1959; amd. Sec. 2, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-150; amd. Sec. 1, Ch. 487, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) and (4) allowing Commission to require a rear-end telemetry system on certain trains and outlining acceptable systems; in (3), after "regulations", inserted reference to subsections (1) and (2) and near end substituted "compatible with any federal provisions and may not create an undue burden on interstate commerce" for "from time to time coextensive with the requirements of and in conformity to the provisions of the acts of congress and rules and regulations of the interstate commerce commission and the department of transportation, as then effective"; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Caboose required to be rear train car, 69-14-232.

69-14-117. Provision of adequate accommodations and service. The commission shall have the power and it shall be its duty to compel any and all railroads subject hereto to provide, maintain, and operate sufficient train service, both freight and passenger, for the proper and reasonable accommodation of the public and to provide and maintain suitable waiting rooms for passengers and suitable rooms for freight and baggage at all stations.

History: En. Sec. 19, Ch. 37, L. 1907; Sec. 4382, Rev. C. 1907; re-en. Sec. 3801, R.C.M. 1921; re-en. Sec. 3801, R.C.M. 1935; R.C.M. 1947, 72-123.

Cross-References

Duties of railroad, 69-14-201, 69-14-205.

Duty of railroad to furnish shipping and passenger facilities, 69-14-202.

69-14-118. Maintenance of stations where several rail lines come together. (1) Whenever the line of one railroad or railway shall cross, intersect, or parallel (overhead, at grade, or otherwise) the railroad or railway of another company or corporation, the commission shall have power and authority, in addition to all other powers hereafter vested in said commission, after notice and hearing, to order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage, or freight, whenever the same shall be ordered by the commission. Such company or corporation shall, when so ordered by the commission, keep such passenger station warmed, lighted, and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. Said railroad or railway companies crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall stop such trains at said station house so located for the transfer of baggage, passengers, and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the commission.

(2) The expense of construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the commission.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

Cross-References

Authority to erect and maintain buildings, 69-14-532.

69-14-119. Connection of lines where several rail lines come together. (1) Such corporation connecting by crossing, intersecting, or paralleling (overhead, at grade, or otherwise) shall also, when so ordered, after notice and hearing by the commission, unite and connect the tracks of said several corporations so as to permit the transfer, from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads; provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public.

(2) The expense of construction and maintenance shall be apportioned and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the commission; and the expense thus incurred by the commission shall be paid by the railroad or railway companies jointly interested on such basis as the commission may order.

History: En. Sec. 1, Ch. 105, L. 1913; re-en. Sec. 3834, R.C.M. 1921; re-en. Sec. 3834, R.C.M. 1935; amd. Sec. 20. Ch. 315, L. 1974; R.C.M. 1947, 72-156(part).

69-14-120. Violations of provisions relating to rails coming together. Any railroad or railway company and its officers or agents who shall refuse or fail to comply with the provisions of 69-14-118 or 69-14-119 or any order or rule relative thereto made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part).

69-14-121 through 69-14-130 reserved.

69-14-131. Enforcement duties of commission. The commission shall see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. The commission shall report all such violations, with the facts in its possession, to the attorney general or other officer charged with the enforcement of the laws and request him to institute the proper proceedings. All suits between the state and any railroad shall have precedence in all courts over all civil causes, criminal business and original proceedings in the supreme court excepted.

History: En. Sec. 34, Ch. 37, L. 1907; Sec. 4397, Rev. C. 1907; re-en. Sec. 3816, R.C.M. 1921; re-en. Sec. 3816, R.C.M. 1935; R.C.M. 1947, 72-139(part); amd. Sec. 27, Ch. 43, L. 1979.

69-14-132. Legal assistance for commission. The attorney general is the attorney of the commission, and the county attorney of every county in the state shall, on the request and at the direction of the attorney general, assist in all cases, proceedings, and investigations undertaken by the commission under this chapter in his own county. However, the commission may employ special counsel, with the approval of the attorney general, to assist in any case, matter, proceeding, or investigation instituted under this chapter. The attorney general, upon direction of the commission, and the county attorney of each county in this state, upon direction of the attorney general, shall institute and prosecute and appear and defend any action or proceeding arising under this chapter. All suits and proceedings filed in any court of this state under this chapter shall have precedence over all other business in the court except criminal business and original proceedings in the supreme court.

History: En. Sec. 20, Ch. 37, L. 1907; Sec. 4383, Rev. C. 1907; re-en. Sec. 3802, R.C.M. 1921; re-en. Sec. 3802, R.C.M. 1935; amd. Sec. 13, Ch. 315, L. 1974; R.C.M. 1947, 72-124; amd. Sec. 28, Ch. 43, L. 1979.

Cross-References

General duties of Attorney General, 2-15-501.

Supreme Court original jurisdiction, 3-2-202.

Duty of County Attorneys in state matters, 7-4-2716.

Institution of action for value of livestock killed, 69-14-711.

69-14-133. Collection and disposition of penalties and forfeitures. Unless otherwise provided, all penalties and forfeitures incurred, levied, and made under the provisions of this chapter shall be collected by the commission and paid over to the state treasurer and credited to the general fund. Should the commission fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein for the space of 60 days after notice of the cause of complaint by an aggrieved person or shipper, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the commission.

History: En. Sec. 30, Ch. 37, L. 1907; Sec. 4393, Rev. C. 1907; re-en. Sec. 3812, R.C.M. 1921; re-en. Sec. 3812, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-135; amd. Sec. 29, Ch. 43, L. 1979.

Cross-References

Actions to recover excess charges, 69-14-322.

Payment of damages to Department of Livestock, 69-14-711.

69-14-134. Court enforcement of commission actions. (1) The district court has jurisdiction to enforce, by proper decree, injunction, or order, the rates, classifications, rulings, orders, and regulations made or established by the commission under the provisions of this chapter. The proceeding therefor shall be by equitable action in the name of the state and shall be instituted by the attorney general or county attorney, whenever advised by the commission that any railroad, railway, or common carrier is violating or refusing to comply with any such rule, order, rate, classification, or regulation made by the commission and applicable to such railroad, railway, or common carrier. Such proceedings shall have precedence over all other business in such courts except criminal business.

(2) In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate, or classification involved is unreasonable and unjust as to it. If, in such action, it is the decision of the court that the rule, regulation, order, rate, or classification is not unreasonable or unjust and that in refusing compliance therewith the railroad, railway, or common carrier is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with the rule, regulation, order, rate, or classification by the defendant and its officers, agents, servants, and employees and may grant such other relief as is just and proper. Any violation of such decree renders the defendant and any officer, agent, servant, or employee of the defendant who is in any manner instrumental in such violation guilty of contempt, punishable by a fine not exceeding $1,000 for each offense or by imprisonment of the person guilty of contempt until he sufficiently purges himself therefrom. Such decree remains in effect until the rule, regulation, order, rate, or classification shall be modified or vacated by the commission. Nothing contained herein shall be construed to deprive either party to such proceedings of the right to trial by jury as provided by the seventh amendment to the constitution of the United States or as provided by the constitution of this state.

(3) An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court except original proceedings in the supreme court.

History: En. Sec. 24, Ch. 37, L. 1907; Sec. 4387, Rev. C. 1907; re-en. Sec. 3806, R.C.M. 1921; re-en. Sec. 3806, R.C.M. 1935; R.C.M. 1947, 72-128; amd. Sec. 30, Ch. 43, L. 1979.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

General duties of Attorney General, 2-15-501.

Contempts, Title 3, ch. 1, part 5.

Supreme Court original jurisdiction, 3-2-202.

Duty of County Attorneys in state matters, 7-4-2716.

Injunctions, Title 27, ch. 19.

Lawsuit to determine reasonableness of Public Service Commission actions, 69-14-402.

69-14-135. General right to supreme court review. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this chapter. Such appeals have precedence over all other business except criminal business and original proceedings in such court and shall be heard and determined as are appeals in civil actions.

History: Ap. p. Sec. 25, Ch. 37, L. 1907; Sec. 4388, Rev. C. 1907; re-en. Sec. 3807, R.C.M. 1921; re-en. Sec. 3807, R.C.M. 1935; Sec. 72-129, R.C.M. 1947; Ap. p. Sec. 6, Ch. 136, L. 1909; re-en. Sec. 3831, R.C.M. 1921; re-en. Sec. 3831, R.C.M. 1935; Sec. 72-154, R.C.M. 1947; Ap. p. Sec. 5, Ch. 105, L. 1913; re-en. Sec. 3839, R.C.M. 1921; re-en. Sec. 3839, R.C.M. 1935; Sec. 72-161, R.C.M. 1947; R.C.M. 1947, 72-129, 72-154, 72-161; amd. Sec. 31, Ch. 43, L. 1979.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Court review of Public Service Commission actions, 69-14-401.

69-14-136. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 6, Ch. 105, L. 1913; re-en. Sec. 3840, R.C.M. 1921; re-en. Sec. 3840, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-162.

69-14-137. Violations. If any railroad or other common carrier willfully violates any provision of this chapter, does any other act herein prohibited, or refuses to perform any lawful orders emanating from the commission relating to rates and charges or any other duty enjoined upon it for which a penalty has not been provided, then for every such act or violation it shall pay to the state a penalty of not more than $500.

History: En. Sec. 29, Ch. 37, L. 1907; Sec. 4392, Rev. C. 1907; re-en. Sec. 3811, R.C.M. 1921; re-en. Sec. 3811, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-134; amd. Sec. 32, Ch. 43, L. 1979.

Part 2

Requirements for Railroads

Part Cross-References

Railroad responsibility for costs of special improvement district around tracks, 7-12-2156.

City and town regulation of railroads, Title 7, ch. 14, part 43.

Certain political contributions by railroads prohibited, 13-35-227.

Report of shipment data on oil or gas, 15-36-104.

Railroad crossings — stops required, 61-8-348, 61-8-349.

Moving heavy equipment at grade crossings, 61-8-350.

Expense of cleaning and disinfecting carriers' facilities, 81-2-110.

69-14-201. General duties of railroad corporation. Every railroad corporation must:

(1) start and run its cars for the transportation of persons and property at such regular times as it shall fix by public notice;

(2) furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or are offered for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and

(3) take, transport, and discharge such passengers and property at, from, and to such places on the due payment of tolls, freight, or fare therefor.

History: En. Sec. 971, Civ. C. 1895; re-en. Sec. 4324, Rev. C. 1907; re-en. Sec. 6558, R.C.M. 1921; Cal. Civ. C. Sec. 481; re-en. Sec. 6558, R.C.M. 1935; R.C.M. 1947, 72-602.

Cross-References

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

Power and duty of Public Service Commission to compel adequate accommodations and service, 69-14-117.

Provision of conveniences and services required, 69-14-532, 69-14-562.

69-14-202. Duty to furnish shipping and passenger facilities. (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

History: En. Sec. 1, Ch. 26, L. 1905; re-en. Sec. 4343, Rev. C. 1907; re-en. Sec. 6582, R.C.M. 1921; re-en. Sec. 6582, R.C.M. 1935; amd. Sec. 1, Ch. 266, L. 1969; amd. Sec. 21, Ch. 315, L. 1974; R.C.M., 72-627; amd. Sec. 33, Ch. 43, L. 1979; amd. Sec. 1, Ch. 495, L. 1987; amd. Sec. 1, Ch. 645, L. 1989.

Cross-References

Provision of conveniences and services required, 69-14-532, 69-14-562.

69-14-203. Posting of information concerning train schedules. (1) Every company or corporation managing, operating, or leasing any railroad in this state that is engaged in the transportation of passengers shall place or cause to be placed a bulletin board in a conspicuous place in and about each and every station or depot where an agent, telephone, or telegraph operator is kept. Such railway company or corporation shall, for the information of the traveling public, at least 3 hours before the advertised scheduled time of the arrival of each passenger train stopping upon such route at such station, cause to be posted upon such bulletin board the number of the train, the time such train is due, and the fact whether such train is on scheduled time or not and, if late, how much, and shall indicate at the end of 2 hours thereafter any gain or loss of more than 15 minutes made by such train and thereafter, every 30 minutes any gain or loss of more than 15 minutes made by such train, on such bulletin board at such station, showing at each time indicated how much said train is running behind its scheduled time. Nothing in this section shall be so construed as to compel such railway company or corporation leasing, operating, or managing any railroad in this state to post the number, scheduled time, and lateness of such trains as arriving or departing from such stations aforesaid while there is no such agent, telegraph, or telephone operator or any other person on duty, but immediately after such agent, telegraph, or telephone operator in charge of such station comes on duty, such railway company or corporation shall cause to be indicated on said bulletin board the number of any trains then due or overdue or scheduled to be due within 3 hours, the time any train or trains are due, and how much the trains are running behind their scheduled time. Any such passenger train not more than 10 minutes late shall be deemed to be on time as to the operation of this section. When such station is connected by telephone with the central exchange in any town or city, such railway company or corporation, upon request of such central exchange, shall promptly notify such central exchange as to the time of arrival of such passenger train, giving the same information as is posted on said bulletin board and at the time of said posting.

(2) Every railway company or corporation managing, operating, or leasing any railroad in this state that shall willfully or negligently violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $200 for each offense; such action to be prosecuted by the county attorney of the county in which the violation occurs, in the name of the state of Montana.

History: (1)En. Sec. 1, Ch. 67, L. 1917; re-en. Sec. 6584, R.C.M. 1921; re-en. Sec. 6584, R.C.M. 1935; Sec. 72-629, R.C.M. 1947; (2)En. Sec. 2, Ch. 67, L. 1917; re-en. Sec. 6585, R.C.M. 1921; re-en. Sec. 6585, R.C.M. 1935; Sec. 72-630, R.C.M. 1947; R.C.M. 1947, 72-629, 72-630.

Cross-References

Time schedules to be followed, 69-11-103.

Establishment and notice of schedule for passenger carriers, 69-11-202.

69-14-204. Effect of refusal to accept passengers or property. In case of refusal by such corporation or its agents so to take and transport any passengers or property or to deliver the same at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

History: En. Sec. 972, Civ. C. 1895; re-en. Sec. 4325, Rev. C. 1907; re-en. Sec. 6559, R.C.M. 1921; Cal. Civ. C. Sec. 482; re-en. Sec. 6559, R.C.M. 1935; R.C.M. 1947, 72-603.

Cross-References

Costs, Title 25, ch. 10.

Damages, Title 27, ch. 1, parts 2 and 3.

Power and duty of Public Service Commission to compel adequate accommodations and service, 69-14-117.

69-14-205. Accommodations for and care to be taken of passengers. (1) Every railroad corporation must furnish on the inside of its passenger cars sufficient room and accommodations for all passengers to whom tickets are sold for any one trip and for all persons presenting tickets entitling them to travel thereon.

(2) When fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

History: En. Sec. 973, Civ. C. 1895; re-en. Sec. 4326, Rev. C. 1907; re-en. Sec. 6560, R.C.M. 1921; Cal. Civ. C. Sec. 483; re-en. Sec. 6560, R.C.M. 1935; R.C.M. 1947, 72-604.

Cross-References

Transport of passengers, 69-11-203.

Provision of conveniences and services required, 69-14-532, 69-14-562.

69-14-206. Rules for fare and conduct of passengers. (1) Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules regarding fare and conduct of its passengers.

(2) In case any passenger is injured on or from the platform of a car or on any baggage, wood, gravel, or freight car, in violation of such printed regulations or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not respon-

sible for damages for such injuries unless the corporation failed to comply with the provisions of 69-14-205.

History: En. Sec. 974, Civ. C. 1895; re-en. Sec. 4327, Rev. C. 1907; re-en. Sec. 6561, R.C.M. 1921; Cal. Civ. C. Sec. 484; re-en. Sec. 6561, R.C.M. 1935; R.C.M. 1947, 72-605.

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

Liability, Title 27, ch. 1, part 7.

Requirements for carriers of persons for reward, 69-11-201.

69-14-207. Expulsion of passengers refusing to pay fare. If any passenger refuses to pay his fare or to exhibit or surrender his ticket when reasonably requested to do so, the conductor and employees of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place or near any dwelling house, on stopping the train.

History: En. Sec. 975, Civ. C. 1895; re-en. Sec. 4328, Rev. C. 1907; re-en. Sec. 6562, R.C.M. 1921; Cal. Civ. C. Sec. 487; re-en. Sec. 6562, R.C.M. 1935; R.C.M. 1947, 72-606.

Cross-References

Payment of fare by passengers, 69-11-205.

Ejection of passengers, 69-11-209.

69-14-208. Officers and employees of corporation to wear badges. (1) Every conductor, baggage master, engineer, brakeman, or other employee of any railroad corporation employed on a passenger train or at stations for passengers must wear, upon his hat or cap or in some conspicuous place on the breast of his coat, a badge indicating his office or station and the initial letters of the name of the corporation by which he is employed.

(2) No collector or conductor without such badge is authorized to demand or to receive from any passenger any fare, toll, or ticket or exercise any of the powers of his office or station, and no other officer or employee without such badge has any authority to meddle or interfere with any passenger or property.

History: En. Sec. 976, Civ. C. 1895; re-en. Sec. 4329, Rev. C. 1907; re-en. Sec. 6563, R.C.M. 1921; Cal. Civ. C. Sec. 488; re-en. Sec. 6563, R.C.M. 1935; R.C.M. 1947, 72-607.

69-14-209. Issuance of passenger tickets. (1) Every railroad corporation must provide and, on being tendered the regular rates of fare, furnish a ticket to every person desiring a passage on its passenger cars, which entitles the purchaser to a ride and to the accommodations provided on its cars from the depot or station where the same is purchased to any other depot or station on the line of its road. Every such ticket entitles the holder thereof to ride on its passenger cars to the station or depot of destination or any intermediate station and from any intermediate station to the depot of destination designated in the ticket at any time within 6 months thereafter.

(2) Any corporation failing to provide and furnish tickets or refusing the passage which the same calls for when sold must pay to the person refused the sum of $200.

History: En. Sec. 977, Civ. C. 1895; re-en. Sec. 4330, Rev. C. 1907; re-en. Sec. 6564, R.C.M. 1921; Cal. Civ. C. Sec. 490; re-en. Sec. 6564, R.C.M. 1935; R.C.M. 1947, 72-608; amd. Sec. 34, Ch. 43, L. 1979.

69-14-210. Baggage checks. A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employee of such railroad corporation and a duplicate thereof given to the passenger or person delivering the same in his behalf. If such check is refused on demand, the railroad corporation must pay to such passenger the sum of $20, to be recovered in an action for damages, and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train. On producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

History: En. Sec. 970, Civ. C. 1895; re-en. Sec. 4323, Rev. C. 1907; re-en. Sec. 6557, R.C.M. 1921; Cal. Civ. C. Sec. 479; re-en. Sec. 6557, R.C.M. 1935; R.C.M. 1947, 72-601.

Cross-References

Carriage of baggage by carriers of persons, 69-11-204.

Bailments, Title 70, ch. 6.

69-14-211. Certificate of authority for ticket agents. (1) It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell, within the state, tickets or other evidence entitling the holder thereof to travel upon their railroad or steamboat with a certificate setting forth the authority of such agent to make such sales. The certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat and shall, for the information of travelers, be kept posted in a conspicuous place in the office of such agent.

(2) It shall be the duty of every agent residing or acting within this state who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or to any officer of the law who may request him to do so such certificate of his authority thus to sell.

History: (1)En. Sec. 1, p. 150, L. 1893; re-en. Sec. 978, Civ. C. 1895; re-en. Sec. 4331, Rev. C. 1907; re-en. Sec. 6565, R.C.M. 1921; re-en. Sec. 6565, R.C.M. 1935; amd. Sec. 1, Ch. 5, L. 1943; amd. Sec. 1, Ch. 60, L. 1949; Sec. 72-609, R.C.M. 1947; (2)En. Sec. 4, p. 151, L. 1893; re-en. Sec. 981, Civ. C. 1895; re-en. Sec. 4334, Rev. C. 1907; re-en. Sec. 6568, R.C.M. 1921; re-en. Sec. 6568, R.C.M. 1935; amd. Sec. 3, Ch. 60, L. 1949; Sec. 72-612, R.C.M. 1947; R.C.M. 1947, 72-609, 72-612.

69-14-212. Unlawful sale of tickets. (1) It shall be unlawful for any person not a duly authorized ticket agent and in possession of such certificate, so posted as aforesaid, to sell, barter, or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated, or owned within or without the limits of this state.

(2) Whoever shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year or both, in the discretion of the court in which such offender shall be convicted.

History: (1)En. Sec. 2, p. 150, L. 1893; re-en. Sec. 979, Civ. C. 1895; re-en. Sec. 4332, Rev. C. 1907; re-en. Sec. 6566, R.C.M. 1921; re-en. Sec. 6566, R.C.M. 1935; amd. Sec. 2, Ch. 60, L. 1949; Sec. 72-610, R.C.M. 1947; (2)En. Sec. 3, p. 151, L. 1893; re-en. Sec. 980, Civ. C.

1895; re-en. Sec. 4333, Rev. C. 1907; re-en. Sec. 6567, R.C.M. 1921; re-en. Sec. 6567, R.C.M. 1935; Sec. 72-611, R.C.M. 1947; R.C.M. 1947, 72-610, 72-611.

69-14-213. Redemption of unused tickets. (1) It shall be the duty of the owners of every railroad or steamboat situate or operated in whole or in part within this state to provide for the redemption, under reasonable precautions, of the whole or of any coupon of any ticket theretofore sold by any agent, authorized as aforesaid, which the purchaser, for any reason other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost in case of the ticket not used and at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used in case of a coupon of a ticket partially used; provided, that such ticket or coupon shall be presented for such redemption to any agent, authorized as aforesaid, before the time therein limited for the use thereof shall have expired. The deposit of such ticket or part of ticket in the post office, addressed to any such agent, with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket shall be deemed such presentation.

(2) When any ticket-selling agent, so licensed as aforesaid, or any common carrier subject to the provisions of 69-14-211 through 69-14-214, shall sell, barter, or transfer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law and when such mileage book, commutation ticket, or excursion ticket shall by the terms thereof be limited in respect of the time in which the same shall be used, then and in that case, such mileage book, commutation ticket, or excursion ticket shall not be redeemed by said common carrier subject to the provisions of 69-14-211 through 69-14-214.

(3) The sale by any person of such ticket or of the unused portion of any such ticket or coupon otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation, and any person guilty of such violation shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year or both, in the discretion of the court in which such offender shall be convicted.

History: En. Sec. 5, p. 152, L. 1893; re-en. Sec. 982, Civ. C. 1895; re-en. Sec. 4335, Rev. C. 1907; re-en. Sec. 6569, R.C.M. 1921; re-en. Sec. 6569, R.C.M. 1935; R.C.M. 1947, 72-613.

69-14-214. Penalty for failure to redeem ticket. Any railroad company or steamboat company which shall by any of its authorized ticket-selling agents within this state unreasonably refuse to redeem any coupon of a ticket or any ticket as required by 69-14-213 shall pay to the state a fine not exceeding $500 for each offense.

History: En. Sec. 6, p. 152, L. 1893; re-en. Sec. 983, Civ. C. 1895; re-en. Sec. 4336, Rev. C. 1907; re-en. Sec. 6570, R.C.M. 1921; re-en. Sec. 6570, R.C.M. 1935; R.C.M. 1947, 72-614.

69-14-215. Issuance of bills of lading by railroad station agents — penalty. (1) All railway companies operating in the state which do not permit bills of lading to be issued by employees other than agents shall be required to have bills of lading issued by the station agent at the nearest station where a station agent is regularly maintained in the direction toward which the shipment is destined. The conductor of the train which receives the shipment at its point of origin shall deliver to the agent at the nearest station at which an agent is maintained through which the shipment moves, immediately upon the arrival of the train carrying the shipment at the agency station, all data necessary for the issuance of a bill of lading for the shipment. The agent shall immediately issue the bill of lading and shall deliver the same to the shipper or his agent or shall, within 24 hours after the receipt of the data from the conductor, for shipment of 20,000 pounds or over, deposit the bill of lading in a United States post office, addressed and registered or certified to the consignor of the shipment or his agent or attorney to his proper post-office address. A bill of lading for shipments of less than 20,000 pounds may be mailed without the use of registered or certified mail.

(2) Any railway company operating in Montana violating any provisions of this section is guilty of a misdemeanor and liable to a fine of not less than $50 or more than $1,000.

History: **En. Secs. 1, 2, Ch. 24, L. 1917; re-en. Secs. 6611, 6612, R.C.M. 1921; re-en. Secs. 6611, 6612, R.C.M. 1935; R.C.M. 1947, 72-654, 72-655; amd. Sec. 35, Ch. 43, L. 1979.**

69-14-216. Restriction on contractual time limitations for notification of injury to transported livestock. Any provision, stipulation, or condition in any shipping contract, bill of lading, or other agreement made or entered into by or between any common carrier and the owner or shipper of any shipment of livestock providing that written or verbal notice of loss, injury, or damage thereto or of claim therefor shall be made or given to any common carrier, to any agent or officer of any common carrier, or to any other person within any period less than 4 months from the date of the occurrence of any such loss, injury, or damage shall be void and of no effect.

History: **En. Sec. 1, Ch. 138, L. 1909; re-en. Sec. 6550, R.C.M. 1921; re-en. Sec. 6550, R.C.M. 1935; R.C.M. 1947, 72-411.**

Cross-References

Relationship to Uniform Commercial Code, 30-1-111.

Duty of care — contractual limitation of carrier's liability, 30-7-309.

69-14-217 through 69-14-230 reserved.

69-14-231. Brake equipment. The commission shall have the power and authority to examine and inspect all brakes and brake equipment and after notice and hearing to make and enforce reasonable rules with respect to the examination, inspection, and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules shall be from time to time coextensive with the requirements of and in conformity to the provisions of the acts of congress and rules and regulations of the interstate commerce commission and the department of transportation, as then effective.

History: **En. Sec. 2, Ch. 136, L. 1909; re-en. Sec. 3828, R.C.M. 1921; re-en. Sec. 3828, R.C.M. 1935; amd. Sec. 3, Ch. 124, L. 1971; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-151.**

69-14-232. Caboose required to be rear train car — size and equipment of caboose. (1) Every railroad must place, as the last car on any freight train required by federal railroad administration rules to have its air system and cars inspected by qualified inspecting employees at any designated inspection point and between said inspection points and operating within the state, a caboose occupied by at least one employee of the railroad. A caboose is required on all through-freight, local, and work trains. Provided however, a caboose is not required on a train operating within railroad yard or switch limits as presently established, or on a through-freight if not more than 2,000 feet in overall length operating within an automatic block signal system or within centralized traffic control limits.

(2) Cabooses shall be at least 24 feet in length, exclusive of platforms, and shall be provided with a door in each end and with cupolas or bay windows, platforms, guardrails, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses shall be of metal frame construction and be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are as follows:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of 2 1/2 inches and a minimum capacity of 18,000 foot-pounds and shall comply with Association of American Railroads Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot-candles shall be provided for direct illumination of the caboose desk, reading areas, and lavatory facilities.

(c) A spotlight shall be provided on the rear of the caboose with sufficient candlepower to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker or markers shall be either reflectorized or capable of illumination when required.

(e) Only glass of the safety-glass type shall be used in partitions, doors, windows, or wind deflectors.

(f) All seats and seat backs shall conform to the safety standards designated by the United States department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(3) Any person, corporation, or company, operating any railroad or railway in this state, violating any of the provisions of this section and 69-14-233 is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $1,000 for each offense.

History: (1)En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; Sec. 72-622, R.C.M. 1947; (2)En. Sec. 2, Ch. 54, L. 1907; Sec. 4339, Rev. C. 1907; re-en. Sec. 6578, R.C.M. 1921; re-en. Sec. 6578, R.C.M. 1935; Sec. 72-623, R.C.M. 1947; R.C.M. 1947, 72-622(1), 72-623; amd. Sec. 36, Ch. 43, L. 1979; amd. Sec. 1, Ch. 607, L. 1983.

Cross-References

General protection of health and safety on railroads, 69-14-116.

Regulation of railroad equipment, 69-14-561.

69-14-233. Failure of caboose equipment or maintenance. (1) Where a failure occurs in required equipment or standards of maintenance after a caboose has commenced to move in service, the failure shall be reported in accordance with subsection (2). The railroad operating that caboose is not in violation of this section and 69-14-232 if the failure of equipment or standards of maintenance is corrected at the first point maintenance supplies are available or in the case of repairs, the first point materials and repair facilities are available and repairs can reasonably be made.

(2) A register for the reporting of failures of the required equipment or standards of maintenance shall be maintained on all cabooses, and provisions for maintaining a record of reported failures for not less than the previous 80-day period shall be established.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-234. Authorization for exemption from caboose provisions. If, in any particular case, temporary exemption from any requirements of 69-14-232 and 69-14-233 is considered necessary by a carrier concerned, the commission may consider the application of that carrier for temporary exemption and may grant an exemption when the application is accompanied by a full statement of the conditions existing and the reason for the exemption. Any exemption so granted will be limited to the particular case and will be limited to a stated period of time.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(part).

69-14-235. Application of caboose provisions. The provisions of 69-14-232 through 69-14-234 apply to all cabooses except those used exclusively in yard service.

History: En. Sec. 1, Ch. 54, L. 1907; Sec. 4338, Rev. C. 1907; re-en. Sec. 6577, R.C.M. 1921; re-en. Sec. 6577, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1975; amd. Sec. 1, Ch. 32, L. 1977; R.C.M. 1947, 72-622(4).

69-14-236. Headlights and speedometers for locomotives. (1) A person, corporation, or company operating a railroad or railway in this state must equip all locomotive engines used in the transportation of trains over the railroad or railway with:

(a) electric headlights of at least 1,500 candlepower, measured without the aid of a reflector; and

(b) a speedometer that is maintained in good working order at all times and that is located in the lead or controlling unit.

(2) A locomotive used exclusively in yard service is not required to be equipped with a speedometer.

(3) If the speedometer fails en route, it will be deemed as being in good working order until it reaches the next terminal where it will be exchanged with an engine with a working speedometer if one is available.

(4) Any person, corporation, or company, operating any railroad or railway in this state, violating the provisions of this section shall be deemed guilty

of a misdemeanor and upon conviction thereof shall be fined not less than $100 or more than $1,000 for each offense.

History: (1) thru (3)En. Sec. 1, Ch. 18, L. 1909; re-en. Sec. 6609, R.C.M. 1921; re-en. Sec. 6609, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1977; Sec. 72-652, R.C.M. 1947; (4)En. Sec. 2, Ch. 18, L. 1909; re-en. Sec. 6610, R.C.M. 1921; re-en. Sec. 6610, R.C.M. 1935; Sec. 72-653, R.C.M. 1947; R.C.M. 1947, 72-652, 72-653.

Cross-References

Regulation of railroad equipment, 69-14-561.

69-14-237. Locomotive engines and electric motors to be marked with identifying numbers. (1) It shall be the duty of every person, corporation, or company operating a railroad or railway in this state to equip all locomotive engines and electric motors used in hauling trains over said railroad or railway with suitable numbers, which numbers shall be displayed at the front and both sides of the headlight on said locomotive engine or electric motor and to be such size as to be easily read from a passing or meeting train.

(2) When a complaint is made to the commission that any person, corporation, or company operating a railroad or railway in this state has failed to comply with the provisions of this section, such commission shall order a hearing and shall serve a notice on such person, corporation, or company at least 15 days before the date set for such hearing. The notice may be served upon any agent of such person, corporation, or company. At the conclusion of such hearing, the commission may make such order in the premises as is deemed necessary and may prescribe the time within which all such locomotive engines shall be equipped with such numbers.

(3) Any person, corporation, or company operating a railroad or railway in this state who violates any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50 or more than $100 for each offense.

History: (1)En. Sec. 1, Ch. 145, L. 1919; re-en. Sec. 6620, R.C.M. 1921; re-en. Sec. 6620, R.C.M. 1935; Sec. 72-663, R.C.M. 1947; (2)En. Sec. 2, Ch. 145, L. 1919; re-en. Sec. 6621, R.C.M. 1921; re-en. Sec. 6621, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-664, R.C.M. 1947; (3)En. Sec. 3, Ch. 145, L. 1919; re-en. Sec. 6622, R.C.M. 1921; re-en. Sec. 6622, R.C.M. 1935; Sec. 72-665, R.C.M. 1947; R.C.M. 1947, 72-663, 72-664, 72-665.

69-14-238. Equipment for track motor cars. (1) Every person, firm, or corporation operating or controlling any railroad running through or within this state as a common carrier shall:

(a) equip each of its track motor cars with:

(i) a windshield of safety glass and a device for wiping rain, snow, and other moisture therefrom; such device shall be maintained in good order and so constructed as to be controlled by the operator of said track motor car; and

(ii) upon request of the foreman, a canopy or top of such construction as to adequately protect the occupants thereof from the rays of the sun, rain, snow, or other inclement weather;

(b) equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise with:

(i) an electric headlight of such construction and with sufficient candlepower to be plainly visible at a distance of not less than 300 feet in advance of such track motor car, any track obstruction, landmark, warning sign, or grade crossing; and

(ii) a red rear electric light of sufficient candlepower to be plainly visible at a distance of not less than 300 feet.

(2) Every violation of this section is a misdemeanor.

History: (1)(a)En. Sec. 1, Ch. 109, L. 1957; Sec. 72-668, R.C.M. 1947; (1)(b)En. Sec. 2, Ch. 109, L. 1957; Sec. 72-669, R.C.M. 1947; (2)En. Sec. 3, Ch. 109, L. 1957; Sec. 72-670, R.C.M. 1947; R.C.M. 1947, 72-668, 72-669, 72-670.

Cross-References

General protection of health and safety on railroads, 69-14-116.

Regulation of railroad equipment, 69-14-561.

69-14-239. Operation of trains at grade crossings. (1) Except as provided in subsection (2), no railway company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing.

(2) (a) If any railway company or companies using one or more tracks crossing each other or connecting in any way at a common grade shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them or either of them, render it safe to pass over said crossings without stopping and if such plant, works, or fixtures shall have been first approved by the county commissioners of the county wherein such works are to be constructed and used and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such commissioners, then and in that case the foregoing provisions of this section requiring the stopping of trains at such crossing shall not apply to said companies or either of them.

(b) If said county commissioners shall disapprove any such plans so filed with them or fail to approve the same within 20 days after the filing thereof with them, such railway companies or either of them may apply in the county where such crossing is situated to the district court in and for said county or to a judge thereof in vacation, by petition in writing setting forth the object of such application. Said court or judge shall thereupon appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said county commissioners at least 10 days before the day appointed for said hearing. Said district court or a judge thereof in vacation shall have full power upon the hearing of said petition to grant the prayer thereof or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section requiring the stoppage of trains at crossings shall not apply to said railway companies or either of them if said district court shall by its order upon said petition grant the prayer thereof or otherwise and to any extent approve the construction and use of the interlocking plant or other structures therein referred to.

History: En. Sec. 1, Ch. 8, L. 1903; re-en. Sec. 4359, Rev. C. 1907; re-en. Sec. 6596, R.C.M. 1921; re-en. Sec. 6596, R.C.M. 1935; R.C.M. 1947, 72-641.

Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

69-14-240. Duty to construct drains and ditches. (1) It shall be the duty of every corporation, company, or person owning or operating any railroad or branch thereof in this state and of any corporation, company, or person constructing any railroad in this state, within 3 months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the roadbed of such road or to construct culverts or openings through such roadbed to connect with ditches, drains, or watercourses, so as to afford sufficient outlet to drain and carry off the water along such railroad whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad. None of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described except when required to remove and drain off water accumulated upon property adjacent to or upon the right-of-way whose natural channel or outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid.

(2) In case such corporation, company, or person shall fail or neglect to construct and maintain such ditches or drains as are herein required within the time limited in this section, the board of county commissioners of any county through which such railroad has been or may be constructed and located and in which the draining herein required has been neglected is hereby authorized and required, upon the petition of 20 landowners of such county along the line of and contiguous to such railroad, to cause such ditches or drains, as are herein required, to be constructed and maintained. Said board of county commissioners may maintain an action against such corporation, company, or person so failing to comply with the provisions of this section, in any court of competent jurisdiction and in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches.

History: En. Sec. 2, Ch. 101, L. 1903; re-en. Sec. 4362, Rev. C. 1907; re-en. Sec. 6599, R.C.M. 1921; re-en. Sec. 6599, R.C.M. 1935; R.C.M. 1947, 72-644.

Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

69-14-241 through 69-14-250 reserved.

69-14-251. Annual reports. (1) The commission shall require verified annual reports from each and every railroad owning, operating, or having any line of railroad in this state and shall prescribe the manner in which such reports shall be made and may require specific answers to all questions upon which the commission may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the commission. The commission, at such other times as it may deem necessary, may require such other information, statements, or reports as may be deemed necessary and may fix the time for filing of the same.

(2) Any railroad failing or refusing to make or file such annual report or failing or refusing to furnish such additional information, statements, or

reports, as may be demanded by the commission, shall forfeit the sum of $500 for each day that such refusal or neglect shall be continued.

History: En. Sec. 32, Ch. 37, L. 1907; Sec. 4395, Rev. C. 1907; re-en. Sec. 3814, R.C.M. 1921; re-en. Sec. 3814, R.C.M. 1935; R.C.M. 1947, 72-137.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Authority for report requirement, 69-14-115.

69-14-252. Accident reports. Every railroad company operating any line of railroad within this state shall promptly upon the occurrence of any accident mentioned in 69-14-112(2) report the same to the commission. In the report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed.

History: En. Sec. 17, Ch. 37, L. 1907; Sec. 4380, Rev. C. 1907; re-en. Sec. 3799, R.C.M. 1921; re-en. Sec. 3799, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-121; amd. Sec. 37, Ch. 43, L. 1979.

Cross-References

Public participation in governmental operations, Art. II, sec. 8, Mont. Const.; Title 2, ch. 3.

Part 3

Ratemaking Procedures

69-14-301. Commission powers related to ratemaking. (1) The commission shall adopt all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and to prevent unjust discrimination and intimidation in the rates of freight and passenger tariffs on the different railroads in this state and to make the same effective by enforcing the penalties prescribed in this chapter.

(2) The commission shall fairly and justly classify and subdivide all freight and merchandise of whatever character that may be transported over railroads of this state into such general and special classes or subdivisions as may be considered necessary or expedient.

(3) The commission may fix different rates for different railroads and for different lines under the same management or for different parts of the same lines if found necessary to do justice and may make rates for express companies different from the rates fixed for railroads. The commission shall also fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

(4) The commission shall make and establish reasonable rates for the transportation of freight within the state and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto.

History: (1) thru (3)En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; Sec. 72-116, R.C.M. 1947; (4)En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; Sec. 72-118, R.C.M. 1947; R.C.M. 1947, 72-116(1), 72-118(part); amd. Sec. 38, Ch. 43, L. 1979.

Cross-References

Regulation of rates of railroad corporations, 69-14-560.

69-14-302. Treatment of unclassified charges. The rates, tolls, or charges on any property which shall for any reason remain unclassified by the commission shall not in any event exceed the highest rates fixed for any classification by the commission.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).

69-14-303. Prohibition on rate discrimination. (1) If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, charges, demands, or receives from any person, firm, or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of property subject to the provisions of this chapter than that fixed by the commission for such service, such railroad shall forfeit and pay to the state not less than $500 or more than $2,000 for each offense. Nothing in this subsection prevents any railroad or railroad corporation from giving excursion rates to or from any point within or without the state.

(2) If any railroad subject to this chapter or its agents or officers hereafter collects, charges, demands, or receives from any person, company, firm, or corporation a greater rate, charge, or compensation than that fixed and established by the commission for the transportation of freight, passengers, or cars or for the use of any car on the line of its railroad or any line operated by it or for receiving, forwarding, handling, or storing any such freight car or for any other service performed or to be performed by it, such railroad and its agents and officers shall forfeit and pay to the state a sum not less than $500 or more than $2,000.

(3) (a) It is unlawful for any railroad subject to this title to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kinds of property for a shorter distance than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as through rate than the aggregate of the intermediate rates; provided that upon application to the commission and after investigation, such carrier, in special cases, may be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this subsection, but in exercising the authority conferred upon it in this proviso, the commission shall not permit the establishment of any

charge to or from the more distant point that is not reasonably compensatory for the service performed.

(b) Violations of subsection (3) shall be punished in accordance with 69-14-805.

History: (1), (2)En. Secs. 22, 23, Ch. 37, L. 1907; Secs. 4385, 4386, Rev. C. 1907; re-en. Secs. 3804, 3805, R.C.M. 1921; re-en. Secs. 3804, 3805, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Secs. 58, 59, Ch. 359, L. 1977; Secs. 72-126, 72-127, R.C.M. 1947; (3)En. 72-231 by Sec. 1, Ch. 473, L. 1977; Sec. 72-231, R.C.M. 1947; R.C.M. 1947, 72-126, 72-127, 72-231; amd. Sec. 39, Ch. 43, L. 1979.

Cross-References

Illegal discrimination, Title 49, ch. 2.

Regulation of rates of railroad corporations, 69-14-560.

69-14-304. Prohibition on tunnel charges. (1) It shall be unlawful for any person, association, or corporation operating, leasing, or owning a railroad in the state to accept, demand, or receive any tunnel charges or to accept, demand, or receive any extra mileage or any extra compensation for or on account of any tunnel through which said line of railroad may run. None of the provisions of this section shall apply to rates or charges for travel to or from points outside of the state.

(2) Any person, association, corporation, agent, or manager who shall violate any provision of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $200 or more than $1,000 for each offense.

History: (1)En. Sec. 1, p. 164, L. 1901; re-en. Sec. 4353, Rev. C. 1907; re-en. Sec. 6590, R.C.M. 1921; re-en. Sec. 6590, R.C.M. 1935; Sec. 72-635, R.C.M. 1947; (2)En. Sec. 2, p. 165, L. 1901; re-en. Sec. 4354, Rev. C. 1907; re-en. Sec. 6591, R.C.M. 1921; re-en. Sec. 6591, R.C.M. 1935; Sec. 72-636, R.C.M. 1947; R.C.M. 1947, 72-635, 72-636.

69-14-305. Notice of proposed rate schedule. Before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the commission to publish 10 days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-306. Hearing on proposed rates. The commission shall at the time and place listed in the notice required by 69-14-305 and as soon as practicable afford to any person, firm, corporation, or common carrier who may desire it an opportunity to make an explanation or showing or to furnish information to said commission on the subject of determining and fixing such maximum rates and classifications.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

Cross-References

Hearings to be open, 69-3-104.

69-14-307. Effective date of classifications and rates. All classifications and rates fixed and established by the commission shall become effective

20 days after the railroad affected thereby shall have received certified copies thereof from said commission.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-308. Publication and posting of notice of rate schedule. (1) When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for 2 successive weeks in some newspaper published in the city of Helena. The notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice.

(2) A printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office and passenger depot upon its lines.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

Cross-References

Penalty for failure to post passenger tariffs and rates of freight, 69-14-560.

69-14-309. Posting of rate schedule. Each railroad affected by the provisions of this chapter shall display, in a conspicuous place in each of its stations in this state, a schedule printed in plain, legible, English type showing all classifications and rates fixed and established by the commission.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part); amd. Sec. 40, Ch. 43, L. 1979.

Cross-References

Penalty for failure to post passenger tariffs and rates of freight, 69-14-560.

69-14-310. Failure of railroad to comply. Any failure or refusal on the part of any railroad to comply with the provisions of 69-14-305 through 69-14-309 shall subject such railroad to a penalty of not less than $100 or more than $500 for each day that such failure or neglect is continued.

History: En. Sec. 14, Ch. 37, L. 1907; Sec. 4376, Rev. C. 1907; re-en. Sec. 3795, R.C.M. 1921; re-en. Sec. 3795, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-117(part).

69-14-311. Procedure to alter classifications, rates, and rules of service. (1) The commission shall have the power from time to time to change, alter, amend, or abolish any classification or rate established by it when deemed necessary, as hereinafter provided.

(2) No change or revision of any rate, charge, classification, or rule of service contained in any tariff, classification, or rule of a railroad shall be made by any railroad without first obtaining approval therefor from the commission. Such changes or revisions shall be made by either of the methods hereinafter set forth:

(a) The railroad shall file an application with the commission describing the nature and extent of the change, alteration, or cancellation of the rate, classification, or rule sought, and the commission shall thereafter give not less than 10 days' notice, in the manner determined by the commission as most likely to give notice to the persons to be affected, of the time and place of public hearing to be held on the application by the commission, at which time and place the public generally or any person, firm, or corporation shall have an opportunity to present such facts, information, or statistics as shall be pertinent to the hearing then being held.

(b) The railroad shall file with the commission the tariff sheet or sheets containing such changes or revisions, plainly stating the changes or revisions to be made. Whenever increased rates or charges will result, the proposed tariff sheets shall be accompanied at the time of filing by supporting testimony and exhibits prepared by the railroad. Additional testimony and exhibits may be submitted before or during the hearing provided for in 69-14-312 and may be submitted after the hearing with the approval of the commission. The public shall be provided with such notice of the proposed changes or revisions as the commission shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be filed with the commission 45 days before the proposed effective date. The changes or revisions are effective on the stated effective date unless disallowed or suspended by the commission before that date. The commission may, for good cause, allow any change or revision to become effective in less than 45 days after the filing thereof.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part); amd. Sec. 1, Ch. 430, L. 1979.

Cross-References

Petition for adoption, amendment, or repeal of rules, 2-4-315.

69-14-312. Suspension of classification or rate change. (1) Upon its own initiative or upon the complaint of any interested party filed with the commission within 20 days after the date upon which a change or revision of any rate, fare, charge, or classification is filed with the board, the commission may suspend the operation of such rate, fare, charge, or classification for a period not to exceed 180 days; provided, however, that the order directing such suspension must be issued by the commission not less than 2 business days prior to the proposed effective date and that the rail carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the complaining party mailing a copy of the complaint concerning such proposed change or revision to the carrier or publishing agent. Such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a rail carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff.

(2) When the suspension of any proposed change or revision in a tariff is ordered by the commission, it shall also order a public hearing to consider the reasonableness of the proposed change or revision. Due notice shall be given for such hearing to all known interests or affected persons, and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the commission shall issue an order approving,

denying, or modifying the proposed change or revision; provided, however, that unless such hearing is held and such order is issued within 180 days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 15, Ch. 37, L. 1907; Sec. 4377, Rev. C. 1907; amd. Sec. 1, Ch. 176, L. 1921; re-en. Sec. 3796, R.C.M. 1921; re-en. Sec. 3796, R.C.M. 1935; amd. Sec. 1, Ch. 227, L. 1971; amd. Sec. 1, Ch. 429, L. 1973; R.C.M. 1947, 72-118(part).

69-14-313. Fees to be charged by commission. The commission shall require and receive a fee from the affected railroad to pay the cost of publishing notice as required by this chapter.

History: En. Sec. 3, Ch. 500, L. 1979.

69-14-314 through 69-14-320 reserved.

69-14-321. Complaints of unjust rate discrimination. (1) The commission may entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state or any point therein in the way of rates for the transportation of freight or passengers from points without the state to points within the state and vice versa.

(2) In proper cases, where it appears that the United States interstate commerce commission law has been violated, the commission shall complain to the interstate commerce commission of the United States and aid such commission in any investigation it may make concerning violations of the United States law by furnishing evidence and in any other manner which may seem best suited to enforce both the United States and state law and to protect the interests of the people.

History: En. Sec. 13, Ch. 37, L. 1907; Sec. 4375, Rev. C. 1907; re-en. Sec. 3794, R.C.M. 1921; re-en. Sec. 3794, R.C.M. 1935; amd. Sec. 57, Ch. 359, L. 1977; R.C.M. 1947, 72-116(part).

Cross-References

Investigation of existing rates, classifications, and rules, 69-14-114.

69-14-322. Actions to recover excess charges. (1) Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the commission for such service may be recovered from such railroad by the person or shipper in any action instituted and maintained in the district court of the county in which such payment was made. No contract or agreement, written or otherwise, between such person or shipper and the railroad shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be or be held to be a waiver on the part of such person or shipper of the right to sue and recover for such excess or overcharge as provided for in this section. If upon the trial of such action it shall satisfactorily appear to the court or jury that such overcharge was willfully made, the person or shipper bringing the action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

(2) An action under this section must be brought within 3 years from the date the cause of action accrues.

History: En. Sec. 26, Ch. 37, L. 1907; Sec. 4389, Rev. C. 1907; re-en. Sec. 3808, R.C.M. 1921; amd. Sec. 1, Ch. 155, L. 1925; re-en. Sec. 3808, R.C.M. 1935; R.C.M. 1947, 72-130; amd. Sec. 41, Ch. 43, L. 1979.

Cross-References

"Willfully" defined, 1-1-204.

Costs, Title 25, ch. 10.

Lawsuit to determine reasonableness of Public Service Commission actions, 69-14-402.

Fines for exorbitant rates, 69-14-560.

Part 4

Review of Commission Action

69-14-401. Court review of commission actions. (1) Actions to review the determination of the commission fixing any classification, rate, toll, charge, regulation, or order or the refusal of said commission to make, fix, or establish any classification, rate, toll, charge, regulation, or order shall be commenced, in the district court of the county having jurisdiction thereof, by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions. Notice may be served upon the party defendant either by summons issued and served as provided for in this code in civil actions or the court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than 5 days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions.

(2) If, upon the hearing, the court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said commission to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the court or by the judge thereof at chambers.

History: En. Sec. 21, Ch. 37, L. 1907; Sec. 4384, Rev. C. 1907; re-en. Sec. 3803, R.C.M. 1921; re-en. Sec. 3803, R.C.M. 1935; R.C.M. 1947, 72-125.

Cross-References

Verification of pleadings, 25-4-203.

Applicability in general, Rule 81, M.R.Civ.P. (see Title 25, ch. 20).

General right to Supreme Court review, 69-14-135.

69-14-402. Lawsuit to determine reasonableness of commission actions. (1) Any railroad, shipper, or other interested person may bring an action in the district court of the county where the principal office or place of business of such railroad, shipper, or other interested person is situated or in any county where any classification, rate, toll, charge, rule, or order of the commission is applicable, against the commission as defendant, to determine whether or not any such classification, rate, toll, charge, rule, or order made, fixed, or established by the commission under the provisions of this chapter is just and reasonable.

(2) Until the final decision in any such action, the classification, rate, toll, charge, rule, or order of the commission affecting rates or charges shall be considered to be final and conclusive except as herein otherwise provided. In any action, hearing, or proceeding in any court, the classifications, rates, tolls, charges, rules, and orders made, fixed, and established by the commission shall prima facie be considered just, reasonable, and proper.

(3) All costs and expenses incurred in the hearing, trial, or appeal of any action brought under this section shall be fixed and assessed as may seem just and equitable to the court.

History: (1), (2)En. Sec. 28, Ch. 37, L. 1907; Sec. 4391, Rev. C. 1907; re-en. Sec. 3810, R.C.M. 1921; re-en. Sec. 3810, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-133, R.C.M. 1947; (3)En. Sec. 27, Ch. 37, L. 1907; Sec. 4390, Rev. C. 1907; re-en. Sec. 3809, R.C.M. 1921; re-en. Sec. 3809, R.C.M. 1935; Sec. 72-132, R.C.M. 1947; R.C.M. 1947, 72-132, 72-133; amd. Sec. 42, Ch. 43, L. 1979.

Cross-References

Court enforcement of Public Service Commission actions, 69-14-134.

Actions to recover excess charges, 69-14-322.

69-14-403. Repealed. Sec. 55, Ch. 43, L. 1979.

History: En. Sec. 7, Ch. 136, L. 1909; re-en. Sec. 3832, R.C.M. 1921; re-en. Sec. 3832, R.C.M. 1935; R.C.M. 1947, 72-155.

Part 5

Railroad Corporations

Part Cross-References

Railroad responsibility for costs of special improvement district around tracks, 7-12-2156.

Assessment of railroads, 15-8-301, 15-8-407, 15-23-101.

Assessment of railroads and other franchises, 15-8-407.

Report of shipment data on oil or gas, 15-36-104.

Filing security interest when collateral is railroad equipment, 30-9-403.

Perfection of security interest in rolling stock, 30-9-409.

Securities issued by railroad exempt from securities registration, 30-10-104.

Service of process provisions for insurance not applicable to railroads engaged in interstate commerce, 33-1-614.

Business corporations, Title 35, ch. 1.

Right-of-way of railroad through cemetery prohibited, 35-21-409.

Employment of children by railroad prohibited, 41-2-101.

Railroad corporation special peace officers, Title 44, ch. 4, part 9.

Relocation of utilities' facilities, 60-4-402.

Railroad rehabilitation revenue bonds, Title 60, ch. 11, part 11.

Rolling stock revenue bonds, Title 60, ch. 11, part 12.

Penalty for interference with official railroad signs or signals, 61-8-713.

Eminent domain, Title 70, ch. 30.

Restriction on building railroad on public watershed, 75-6-112.

Contracts for use of railroads, 76-5-1109.

Easements for public uses, 77-2-101.

Assessment of railroads in drainage districts, 85-8-341, 85-8-342.

69-14-501. Organization of railroad corporation. (1) The persons named in the articles of incorporation or a majority of them shall be authorized to order books to be opened for receiving subscriptions to the capital stock of the railroad corporation, at such times and at such places as they may deem expedient, after having given at least 30 days' notice in a newspaper of general circulation in this state of the time and place of opening books.

(2) As soon as 5% of the capital stock is subscribed, they may give like notice for the stockholders to meet at such time and place within the state as they may designate for the purpose of electing five or more directors who shall continue in office until the time fixed for the annual election, which time shall be within 6 months from the date when such directors were elected, and until their successors are elected and qualified. At the time and place appointed, directors shall be elected in the manner provided in 35-1-419 through 35-1-422. The candidates for director receiving the highest number of votes shall be declared elected. The persons named in such articles or such of them as may be present shall be inspectors of such election and shall certify what persons are elected directors and specify the time and place for holding their first meeting.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part); amd. Sec. 43, Ch. 43, L. 1979; amd. Sec. 213, Ch. 368, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at end of second sentence, substituted "35-1-419 through 35-1-422" for "35-1-506". Amendment effective January 1, 1992.

69-14-502. Organization of board of directors. (1) A majority of said directors shall form a board and be competent to fill vacancies therein, make bylaws, and transact all business of the corporation. The directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties. They may from time to time make such dividends of the actual net profits of said corporation as they may think proper and shall hold their offices until their successors are elected and qualified.

(2) A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine or as the bylaws of the corporation may require.

History: En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; R.C.M. 1947, 72-204(part).

69-14-503. Capital stock of railroad corporations. The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of $100 each. Such shares shall be regarded as personal property.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

Cross-References

Property in general — real and personal, Title 70, ch. 1.

69-14-504. Payment for stock in installments. An installment of 10% on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments not exceeding 25% on the capital stock. These installments shall not be called for more frequently than once in 3 months and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

History: En. Sec. 5, p. 93, Ex. L. 1873; re-en. Sec. 303, 5th Div. Rev. Stat. 1879; re-en. Sec. 681, 5th Div. Comp. Stat. 1887; amd. Sec. 891, Civ. C. 1895; re-en. Sec. 4272, Rev. C. 1907; re-en. Sec. 6504, R.C.M. 1921; re-en. Sec. 6504, R.C.M. 1935; R.C.M. 1947, 72-202(part).

69-14-505. Procedure in case of delinquency in payment of installments. (1) If any installment of stock shall remain unpaid for 60 days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee, or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving 30 days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice sent by mail within 5 days after default made to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation. Where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

(2) If any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner.

(3) After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the nonpayment thereof, after the expiration of the 30 days' notice of sale hereinbefore provided for.

History: (1), (2)En. Sec. 6, p. 94, Ex. L. 1873; re-en. Sec. 304, 5th Div. Rev. Stat. 1879; re-en. Sec. 682, 5th Div. Comp. Stat. 1887; amd. Sec. 892, Civ. C. 1895; re-en. Sec. 4273, Rev. C. 1907; re-en. Sec. 6505, R.C.M. 1921; re-en. Sec. 6505, R.C.M. 1935; Sec. 72-203, R.C.M. 1947; (3)En. Sec. 7, p. 95, Ex. L. 1873; re-en. Sec. 305, 5th Div. Rev. Stat. 1879; re-en. Sec. 683, 5th Div. Comp. Stat. 1887; amd. Sec. 893, Civ. C. 1895; re-en. Sec. 4274, Rev. C. 1907; re-en. Sec. 6506, R.C.M. 1921; re-en. Sec. 6506, R.C.M. 1935; Sec. 72-204, R.C.M. 1947; R.C.M. 1947, 72-203, 72-204(part).

69-14-506. Increase of capital stock. If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors, upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

History: En. Sec. 21, p. 104, Ex. L. 1873; re-en. Sec. 319, 5th Div. Rev. Stat. 1879; re-en. Sec. 698, 5th Div. Comp. Stat. 1887; re-en. Sec. 906, Civ. C. 1895; re-en. Sec. 4287,

Rev. C. 1907; re-en. Sec. 6519, R.C.M. 1921; re-en. Sec. 6519, R.C.M. 1935; R.C.M. 1947, 72-217.

69-14-507. Authorization to issue securities. Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the law of the state or territory of Montana, the United States, or any other state or territory:

(1) shall have authority and power to make, issue, negotiate, and deliver its bonds, securities, or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest, and payable at such time or times as its board of directors shall determine;

(2) may negotiate, sell, pledge, or otherwise dispose of the same at such price, on such terms, and in such manner as its board of directors may authorize or determine; and

(3) to secure the payment of all or any of such bonds, securities, or obligations and the interest thereon, may make, execute, and deliver such mortgages or deeds of trust upon all or any part of its property, income, and franchises as the board of directors may determine or direct.

History: En. Sec. 706, 5th Div. Comp. Stat. 1887; re-en. Sec. 913, Civ. C. 1895; re-en. Sec. 4294, Rev. C. 1907; re-en. Sec. 6526, R.C.M. 1921; re-en. Sec. 6526, R.C.M. 1935; amd. Sec. 11-149, Ch. 264, L. 1963; R.C.M. 1947, 72-224.

Cross-References

Authorization to borrow money and secure payment, 69-14-556.

69-14-508. Amendment of certificate of incorporation. Any corporation formed under the provisions of this part may, by a majority vote of its board of directors and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars:

(1) by more particularly describing the general route of its road or any part thereof;

(2) by correcting or supplying any defect, mistake, or insufficiency in the description thereof contained in said certificate; or

(3) by describing any change or changes in its route or any additions or extensions to or of its line of road or by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation.

History: En. Sec. 1, p. 147, L. 1893; re-en. Sec. 920, Civ. C. 1895; re-en. Sec. 4296, Rev. C. 1907; re-en. Sec. 6528, R.C.M. 1921; re-en. Sec. 6528, R.C.M. 1935; R.C.M. 1947, 72-226.

69-14-509. Record of amendment. A copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company and to have been assented to in writing or by vote of stockholders representing at least two-thirds of the subscribed capital stock of the company, shall be filed with and recorded by the secretary of state. A like copy, certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated. From the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers and it and the stockholders thereof shall be subject to the same liabilities as if such amendment had been embraced in the original articles or certificate of incorporation.

History: En. Sec. 2, p. 147, L. 1893; re-en. Sec. 921, Civ. C. 1895; re-en. Sec. 4297, Rev. C. 1907; re-en. Sec. 6529, R.C.M. 1921; re-en. Sec. 6529, R.C.M. 1935; R.C.M. 1947, 72-227.

69-14-510. Additional amendments permitted. Said certificate and amended certificate may be amended in like manner whenever deemed expedient or necessary by the board of directors and stockholders of the company.

History: En. Sec. 3, p. 147, L. 1893; re-en. Sec. 922, Civ. C. 1895; re-en. Sec. 4298, Rev. C. 1907; re-en. Sec. 6530, R.C.M. 1921; re-en. Sec. 6530, R.C.M. 1935; R.C.M. 1947, 72-228.

69-14-511. Authorization to consolidate railroad corporations. (1) Any two or more railroad corporations whose respective lines are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana or of the United States or of any other state or territory, may consolidate their capital stock, franchises, and property and thereby become one corporation to be known by any name adopted by them, which may be that of one of them, upon such terms and conditions as may be agreed upon by them, in the manner provided in 69-14-512.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section and 69-14-512, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 44, Ch. 43, L. 1979.

69-14-512. Procedure to consolidate. (1) Articles of agreement shall be entered into by such corporations, under their respective corporate seals and the signatures of their respective presidents and secretaries, containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including:

(a) the name of the corporation resulting from such consolidation;

(b) the amount of its capital stock and the number and amount of shares thereof;

(c) the manner of retiring the shares of the capital stock of the corporations so consolidated or of converting the same into or exchanging them for the capital stock of such resultant corporation;

(d) the number which shall constitute the board of directors of such corporation and what officers it shall have;

(e) the persons who shall constitute the first board of directors and officers thereof, their terms of office, and the manner in which their successors shall be elected, which shall be according to the provisions of 69-14-501; and

(f) such other matters as are considered necessary to perfect such consolidation and as may be agreed upon.

(2) Such articles of agreement shall, before the same shall be effectual, be assented to, approved, or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least a majority in amount of the outstanding capital stock of such corporations, respectively.

(3) A duplicate of such articles of agreement, together with a copy of the resolutions adopted by the stockholders of such corporations assenting to, approving, or ratifying the same, certified under the corporate seal and the signature of the secretary and verified by a sworn statement of the president and secretary of the corporations stating that such resolution was duly adopted by the vote in favor thereof of the holders of a majority in amount of the outstanding capital stock of the corporations at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state. It shall be the duty of the secretary to record the same upon presentation for that purpose. Upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement and as such shall be perpetual and shall succeed to and have, own, possess, exercise, and enjoy all the powers, rights, franchises, privileges, immunities, and property of every name and nature possessed by the corporations so consolidated or to which they were entitled at the time of such consolidation and shall be entitled to have, own, hold, exercise, possess, and enjoy all the powers, rights, franchises, privileges, and immunities which may at any time appertain to railroad corporations under the general laws of this state. All railroads and branches thereof of the consolidated corporation are subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

History: En. Sec. 703, 5th Div. Comp. Stat. 1887; re-en. Sec. 911, Civ. C. 1895; re-en. Sec. 4292, Rev. C. 1907; re-en. Sec. 6524, R.C.M. 1921; Cal. Civ. C. Sec. 473; re-en. Sec. 6524, R.C.M. 1935; R.C.M. 1947, 72-222(part); amd. Sec. 45, Ch. 43, L. 1979.

69-14-513. Lease or purchase of other railroads. (1) Any railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana, the United States, or any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises, and all other property or appurtenances thereto. The railroad company of any other state of the United States which purchases or leases a railroad or any part thereof in this state:

(a) shall possess and may exercise and enjoy, as to the control, management, and operation of the road, all the rights, powers, privileges, and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain; and

(b) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state.

(2) Any railroad company may sell or lease the whole or any part of its railroad or branches within this state, constructed or to be constructed,

together with all property and rights, privileges, and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States, this state, or any other state or territory of the United States.

(3) All roads or branches thereof in this state, whether purchased or leased, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state.

(4) Before any such lease or purchase shall be effective, it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders, by the holders of a majority in amount of all the outstanding capital stock of the company.

History: En. Sec. 704, 5th Div. Comp. Stat. 1887; re-en. Sec. 912, Civ. C. 1895; re-en. Sec. 4923, Rev. C. 1907; re-en. Sec. 6525, R.C.M. 1921; Cal. Civ. C. Sec. 473a; re-en. Sec. 6525, R.C.M. 1935; R.C.M. 1947, 72-223(part); amd. Sec. 46, Ch. 43, L. 1979.

Cross-References

Effect of lease, 15-23-202, 15-55-101.

69-14-514. Interrailroad business arrangements and out-of-state operations. (1) Any railroad company incorporated pursuant to the laws of this state, the United States, or any state or territory of the United States may at any time, by means of subscription to the capital stock of any other railroad company or by the purchase of its stock or bonds or by guaranteeing its bonds or otherwise, aid such company in the construction of its railroad within or without this state and may take, purchase, hold, sell, and dispose of or guarantee the payment of the capital, stock, bonds, and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line.

(2) Any company owning or operating a railroad within this state may:

(a) extend the same into any other state or territory;

(b) build, buy, lease, or consolidate with any railroad or railroads in such other state or territory;

(c) operate the same; and

(d) own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road.

(3) Such purchase, sale, consolidation with, or lease may be made or such aid furnished upon such terms or conditions as may be agreed upon by the directors or trustees of the respective companies, but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders' meeting or at a special meeting of the stockholders called for that purpose or by approval in writing of a majority in interest of the stockholders of each company respectively.

(4) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 1, p. 157, L. 1893; re-en. Sec. 923, Civ. C. 1895; re-en. Sec. 4299, Rev. C. 1907; re-en. Sec. 6531, R.C.M. 1921; re-en. Sec. 6531, R.C.M. 1935; R.C.M. 1947, 72-229; amd. Sec. 47, Ch. 43, L. 1979.

Cross-References

Effect of securities registration requirements, 30-10-104.

69-14-515. Acceptance of federal laws by railroad. Any such corporations may accept the provisions of any act of congress providing for the creation of bodies corporate for the purposes of this part, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

History: En. Sec. 22, p. 104, Ex. L. 1873; re-en. Sec. 320, 5th Div. Rev. Stat. 1879; re-en. Sec. 699, 5th Div. Comp. Stat. 1887; re-en. Sec. 907, Civ. C. 1895; re-en. Sec. 4288, Rev. C. 1907; re-en. Sec. 6520, R.C.M. 1921; re-en. Sec. 6520, R.C.M. 1935; R.C.M. 1947, 72-218.

69-14-516 through 69-14-530 reserved.

69-14-531. Authorization to operate railroad. Any railroad corporation shall be authorized to locate, construct, maintain, and operate a railroad with a single or double track, with such sidetracks, turnouts, machine shops, offices, and depots as may be necessary, between any points it may select within the places named in the articles of incorporation as termini of such road. It may construct branches to any point in this state and connect its road with that belonging to any other person or corporation and may consolidate with any road not a parallel or competing line.

History: En. Sec. 4, p. 93, Ex. L. 1873; re-en. Sec. 302, 5th Div. Rev. Stat. 1879; re-en. Sec. 680, 5th Div. Comp. Stat. 1887; amd. Sec. 890, Civ. C. 1895; re-en. Sec. 4271, Rev. C. 1907; re-en. Sec. 6503, R.C.M. 1921; Cal. Civ. C. Secs. 454-496; re-en. Sec. 6503, R.C.M. 1935; R.C.M. 1947, 72-201.

69-14-532. Authority to plan, lay out, and construct rail lines. Every railroad corporation may:

(1) cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad;

(2) lay out its road, not exceeding in width 100 feet on each side of its centerline, unless a greater width is required for the purpose of excavation or embankment, and construct and maintain the same, with a single or double track and with such appendages and adjuncts as may be necessary for the convenient use of the same;

(3) construct its road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway or across any railway, canal, ditch, or flume which the route of its road intersects, crosses, or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or watercourse, road, street, avenue, highway, railroad, canal, ditch, or flume thus intersected to its former state of usefulness, as near as possible, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise;

(4) erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of its passengers, freight, and business;

(5) change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided in 69-14-534; but no such change may vary the general route of such road, as contemplated in its articles of incorporation.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part); amd. Sec. 48, Ch. 43, L. 1979.

Cross-References

Right-of-way of railroad through cemetery prohibited, 35-21-409.

Maintenance of stations where several rail lines come together, 69-14-118.

General duties of railroad corporation, 69-14-201, 69-14-202, 69-14-205.

Eminent domain, Title 70, ch. 30.

Restriction on building railroad on public watershed, 75-6-112.

Easements for public uses, 77-2-101.

Navigable waters, 85-1-112.

Drains on railroad lands, 85-8-366.

69-14-533. Authority to enter land for survey purposes. For the purposes of 69-14-532(1), the officers, agents, and employees of a railroad corporation may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

Servitudes, easements, and covenants, Title 70, ch. 17.

69-14-534. Change of location or grade. Whenever any corporation organized under this part shall find it necessary, for the purpose of avoiding annoyance to public travel, dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

History: En. Sec. 13, p. 102, Ex. L. 1873; re-en. Sec. 311, 5th Div. Rev. Stat. 1879; re-en. Sec. 690, 5th Div. Comp. Stat. 1887; re-en. Sec. 898, Civ. C. 1895; re-en. Sec. 4279, Rev. C. 1907; re-en. Sec. 6512, R.C.M. 1921; re-en. Sec. 6512, R.C.M. 1935; R.C.M. 1947, 72-210.

69-14-535. Crossing of roads and streams. It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed, but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

History: En. Sec. 16, p. 103, Ex. L. 1873; re-en. Sec. 314, 5th Div. Rev. Stat. 1879; re-en. Sec. 693, 5th Div. Comp. Stat. 1887; re-en. Sec. 901, Civ. C. 1895; re-en. Sec. 4282, Rev. C. 1907; re-en. Sec. 6515, R.C.M. 1921; re-en. Sec. 6515, R.C.M. 1935; R.C.M. 1947, 72-213.

Cross-References

The Natural Streambed and Land Preservation Act of 1975, Title 75, ch. 7, part 1.

69-14-536. Extension of rail lines into Montana. (1) Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory may extend, construct, maintain, and operate its railroad into and through this state to any place within the state and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state or building any such branch road or any such continuation, the corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch, or continuation and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall record the same when presented for record. Thereupon such corporations shall have all the rights, powers, privileges, immunities, and franchises to make, maintain, and operate such extension and build, maintain, and operate such branch or continuation, including the right of eminent domain, which it would have had if it had been incorporated for such purposes under the general laws of Montana. Any corporation of another state or of the United States extending its railroad or any portion thereof into or through this state:

(a) shall establish and maintain an office or offices in this state at some point or points on its line at which legal process and notice may be served, as upon railroad corporations of this state; and

(b) is subject to taxation and regulation and control by the laws of this state, in all respects the same as if the line were constructed by corporations organized under the laws of this state.

(2) Before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this section, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation.

History: En. Sec. 702, 5th Div. Comp. Stat. 1887; re-en. Sec. 910, Civ. C. 1895; re-en. Sec. 4291, Rev. C. 1907; re-en. Sec. 6523, R.C.M. 1921; re-en. Sec. 6523, R.C.M. 1935; R.C.M. 1947, 72-221; amd. Sec. 49, Ch. 43, L. 1979.

69-14-537. Annual work and completion of road. (1) Organization under this part shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made.

(2) Every railroad corporation shall be required to complete 15 miles upon each of its lines, branches, or extensions each year subsequent to the filing of articles of incorporation. Each railroad corporation shall complete the whole line of its road within 7 years from the date of filing articles of incorporation.

(3) If such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause and if, in the court's judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

History: En. Sec. 12, p. 101, Ex. L. 1873; re-en. Sec. 310, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 37, L. 1883; re-en. Sec. 688, 5th Div. Comp. Stat. 1887; amd. Sec. 896, Civ. C. 1895; re-en. Sec. 4277, Rev. C. 1907; re-en. Sec. 6510, R.C.M. 1921; re-en. Sec. 6510, R.C.M. 1935; R.C.M. 1947, 72-208.

Cross-References

Drains on railroad lands, 85-8-366.

69-14-538. Railroads on Indian and military reservations. Any railroad corporation organized under the laws of this state for the purpose of building railroads which extend upon Indian or military reservations within this state shall not forfeit its charter or any rights or privileges by reason of its failure to build and complete any portion of its road upon such reservations until a grant of a right-of-way therefor has been obtained from the United States or any parties authorized in that behalf, and thereafter the provisions of this part shall be applicable to said corporations.

History: En. Sec. 689, 5th Div. Comp. Stat. 1887; re-en. Sec. 897, Civ. C. 1895; re-en. Sec. 4278, Rev. C. 1907; re-en. Sec. 6511, R.C.M. 1921; re-en. Sec. 6511, R.C.M. 1935; R.C.M. 1947, 72-209.

Cross-References

Disclaimer of jurisdiction over Indian lands, Art. I, Mont. Const.

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

69-14-539. Connections between lines of different railroads. Every railroad corporation has power to cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings, and switches and other conveniences in furtherance of the objects of its connections. Every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made therefor or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in Title 70, chapter 30.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-540 through 69-14-550 reserved.

69-14-551. Establishment of principal office. Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation and giving notice to the secretary of state of such establishment or change.

History: En. Sec. 17, p. 103, Ex. L. 1873; re-en. Sec. 315, 5th Div. Rev. Stat. 1879; re-en. Sec. 694, 5th Div. Comp. Stat. 1887; re-en. Sec. 902, Civ. C. 1895; re-en. Sec. 4283, Rev. C. 1907; re-en. Sec. 6516, R.C.M. 1921; re-en. Sec. 6516, R.C.M. 1935; R.C.M. 1947, 72-214.

Cross-References

Secretary of State, Title 2, ch. 15, part 4.

69-14-552. Authority to hold and transfer property. Every railroad corporation has power to:

(1) receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad;

(2) purchase or by voluntary grants or donations receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road;

(3) purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road and all necessary appendages and adjuncts or acquire them in the manner provided in Title 70, chapter 30, for the condemnation of lands.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

69-14-553. Acquisition and transfer of real estate. A railroad corporation may acquire by purchase or gift any land in the vicinity of its road or through which the road may pass if the land is convenient or necessary to secure the right-of-way or if the land is granted to aid in the construction of the road and, except as provided in 69-14-931 and 69-14-932, may convey the land in any manner the directors may prescribe. All deeds and conveyances made by the corporation must be signed by the president, under the seal of the corporation.

History: En. Sec. 15, p. 102, Ex. L. 1873; re-en. Sec. 313, 5th Div. Rev. Stat. 1879; re-en. Sec. 692, 5th Div. Comp. Stat. 1887; re-en. Sec. 900, Civ. C. 1895; re-en. Sec. 4281, Rev. C. 1907; re-en. Sec. 6514, R.C.M. 1921; re-en. Sec. 6514, R.C.M. 1935; R.C.M. 1947, 72-212; amd. Sec. 3, Ch. 814, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "may pass", substituted "if the land is" for "so far as may be", after "the right-of-way or" substituted "if the land is" for "such as may be", and inserted exception clause relating to 69-14-931 and 69-14-932; and made minor changes in style. Amendment effective May 17, 1991.

69-14-554. Right-of-way through canyons. (1) Any such corporation whose right-of-way or whose track upon such right-of-way extends through any canyon, pass, or defile shall not exclude any other such corporation from a passage through the same upon equitable terms. In case of disagreement, upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction. If it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing. When two or more companies desire to pass through the same canyon, pass, or defile, neither shall exclude the other from passing through the same and neither shall have any compensation therefor, except the actual damage done by so doing. Should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass, or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

(2) If the passage of any such railroad through the canyon, pass, or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by law.

History: En. Sec. 11, p. 100, Ex. L. 1873; re-en. Sec. 309, 5th Div. Rev. Stat. 1879; re-en. Sec. 687, 5th Div. Comp. Stat. 1887; re-en. Sec. 895, Civ. C. 1895; re-en. Sec. 4276, Rev. C. 1907; re-en. Sec. 6509, R.C.M. 1921; re-en. Sec. 6509, R.C.M. 1935; R.C.M. 1947, 72-207.

Cross-References

Right-of-way of railroad through cemetery prohibited, 35-21-409.

Reduction of slash while clearing right-of-way for railroad, 76-13-407.

Easements for public uses, 77-2-101.

69-14-555. Judgment liens against railroad property. A judgment against any railroad corporation for any injury to person or property or for material furnished or work or labor done upon any of the property of such corporation shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this part.

History: En. Sec. 707, 5th Div. Comp. Stat. 1887; re-en. Sec. 914, Civ. C. 1895; re-en. Sec. 4295, Rev. C. 1907; re-en. Sec. 6527, R.C.M. 1921; re-en. Sec. 6527, R.C.M. 1935; R.C.M. 1947, 72-225.

Cross-References

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

69-14-556. Authorization to borrow money and secure payment. Any corporation organized under this part:

(1) shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties; and

(2) may execute bonds therefor in sum of not less than $100 and secure the payment thereof by mortgage or pledge of the property and income of such corporation.

History: En. Sec. 14, p. 102, Ex. L. 1873; re-en. Sec. 312, 5th Div. Rev. Stat. 1879; re-en. Sec. 691, 5th Div. Comp. Stat. 1887; re-en. Sec. 899, Civ. C. 1895; re-en. Sec. 4280, Rev. C. 1907; re-en. Sec. 6513, R.C.M. 1921; re-en. Sec. 6513, R.C.M. 1935; amd. Sec. 11-148, Ch. 264, L. 1963; R.C.M. 1947, 72-211.

Cross-References

Authorization to issue securities, 69-14-507.

69-14-557. State not liable for obligations of railroad. Nothing in this part shall be construed to make the state or any municipality therein liable for any debts or obligations of any character which may be contracted by such corporations.

History: En. Sec. 19, p. 104, Ex. L. 1873; re-en. Sec. 317, 5th Div. Rev. Stat. 1879; re-en. Sec. 696, 5th Div. Comp. Stat. 1887; re-en. Sec. 904, Civ. C. 1895; re-en. Sec. 4285, Rev. C. 1907; re-en. Sec. 6518, R.C.M. 1921; re-en. Sec. 6518, R.C.M. 1935; R.C.M. 1947, 72-216.

69-14-558. Transportation of passengers and property. Every railroad corporation has power to:

(1) carry persons and property on their railroad and receive tolls or compensation therefor;

(2) regulate the time and manner in which passengers and property shall be transported and the tolls and compensation to be paid therefor within the limits prescribed by law and subject to alteration, change, or amendment by the legislature at any time.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

Cross-References

Payment of liquor taxes by passenger carriers, 16-1-402.

Railroad to report beer transported, 16-3-235.

Passenger carriers to obtain liquor licenses, 16-4-302.

Carriers of passengers, Title 69, ch. 11, part 2.

Carriers of property, Title 69, ch. 11, part 4.

Storage of unclaimed property, 70-9-402.

Reduction of slash while clearing right-of-way for railroad, 76-13-407.

Inspection of livestock — exception, 81-3-212.

69-14-559. Maintenance of hotels in parks and along lines. Any railway company or corporation, organizing under the laws of the United States, the state of Montana, or of any other state or territory and owning or operating a line of railway in the state of Montana, may, in connection with its railway business, construct, acquire, own, operate, and maintain, in or on public or national parks traversed, touched, or reached by its line of railway in the state of Montana and at convenient points along its line, hotels, inns, and restaurants for the accommodation of the employees and patrons of said railway company or corporation, either in its own name or in the name of another corporation, provided that the stock of such other corporation is owned or controlled by said railway company or corporation.

History: En. Sec. 1, Ch. 82, L. 1915; re-en. Sec. 6508, R.C.M. 1921; re-en. Sec. 6508, R.C.M. 1935; R.C.M. 1947, 72-206.

Cross-References

Glacier National Park, 2-1-205.

Yellowstone National Park, 2-1-207.

Concurrent jurisdiction of the United States over national park land, 2-1-214.

69-14-560. Regulation of rates of railroad corporations. Any railroad corporation within this state shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall:

(1) ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter, or passenger;

(2) make any unjust discrimination in its rates;

(3) willfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this state.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).

Cross-References

Illegal discrimination, Title 49, ch. 2.

Prohibition on rate discrimination, 69-14-303.

Publication and posting of notice of rate schedule, 69-14-308, 69-14-309.

69-14-561. Regulation of railroad equipment. Every railroad corporation has power to:

(1) regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road; and

(2) establish, execute, and enforce all needful and proper rules for the management of its business transactions usual and proper for railroad corporations.

History: En. Sec. 894, Civ. C. 1895; re-en. Sec. 4275, Rev. C. 1907; re-en. Sec. 6507, R.C.M. 1921; Cal. Civ. C. Sec. 465; re-en. Sec. 6507, R.C.M. 1935; R.C.M. 1947, 72-205(part).

Cross-References

Headlight and speedometer requirements, 69-14-236.

69-14-562. Regulation of health and safety on railroads. Any railroad corporation within this state shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense in the sum of $1,000, for the second violation of the same provision, $2,000, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than $5,000 or more than $10,000, if the corporation shall:

(1) neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight;

(2) use any highly inflammable oils for lighting any car on its passenger trains;

(3) transport within this state on any of its passenger cars any oil of vitriol, gunpowder, lucifer matches, nitroglycerine, glynon oil, nytroleum or blasting oil, nitrate oil, powder mixed with any such oil or fiber saturated therewith, duolin or giant powder, blasting powder, or other goods of a dangerous nature;

(4) in any incorporated city or town in this state, run any train at a rate of speed forbidden by the laws of this state or the ordinances of such city or town;

(5) run any train over any unsafe bridge, trestlework, or aqueduct in this state;

(6) fail to have upon any locomotive in use by it in this state a bell and whistle in fit condition for use thereon;

(7) permit any locomotive to approach any highway, road, or railroad crossing without causing the whistle to be sounded at a point between 50 and 80 rods from the crossing, the bell to be rung from said point until the crossing is reached;

(8) willfully fail to make any report herein required or which may be hereafter required by any law of this state.

History: En. Sec. 23, p. 104, Ex. L. 1873; re-en. Sec. 321, 5th Div. Rev. Stat. 1879; re-en. Sec. 700, 5th Div. Comp. Stat. 1887; amd. Sec. 908, Civ. C. 1895; amd. Sec. 1, Ch. 66, L. 1903; re-en. Sec. 4289, Rev. C. 1907; re-en. Sec. 6521, R.C.M. 1921; amd. Sec. 1, Ch. 7, L. 1929; re-en. Sec. 6521, R.C.M. 1935; R.C.M. 1947, 72-219(part).

Cross-References

"Willfully" defined, 1-1-204.

Municipal regulation of railroads, 7-14-4301.

Administrative rules governing transportation and storage of explosives — Department of Justice, 50-3-102.

Investigation of health and safety of operation authorized, 69-14-115.

General duties of railroad corporation, 69-14-201, 69-14-202, 69-14-205.

69-14-563. Construction and operation of telegraph line. Any such corporation is hereby authorized to construct, maintain, and operate a telegraph line along its road.

History: En. Sec. 18, p. 103, Ex. L. 1873; re-en. Sec. 316, 5th Div. Rev. Stat. 1879; re-en. Sec. 695, 5th Div. Comp. Stat. 1887; re-en. Sec. 903, Civ. C. 1895; re-en. Sec. 4284, Rev. C. 1907; re-en. Sec. 6517, R.C.M. 1921; re-en. Sec. 6517, R.C.M. 1935; R.C.M. 1947, 72-215(part).

Part 6

Railroad Highway Crossings

Part Cross-References

Municipal regulation of railways and street railroads, Title 7, ch. 14, part 43.

Authority of Highway Commission to prioritize expenditures on railroad crossings, 60-2-121.

Obedience to signal indicating approach of train, 61-8-347.

Railroad crossings — stops required, 61-8-348, 61-8-349.

Moving heavy equipment at grade crossings, 61-8-350.

Penalty for interference with official railroad signs or signals, 61-8-713.

69-14-601. Definition of railroad company. The words "railroad company", as used in 69-14-601 through 69-14-611, shall be taken and construed to mean any corporation, person, or association of persons owning or operating a railroad.

History: En. Sec. 12, Ch. 148, L. 1919; re-en. Sec. 6636, R.C.M. 1921; re-en. Sec. 6636, R.C.M. 1935; R.C.M. 1947, 72-712.

69-14-602. Construction and maintenance of railroad crossings outside of incorporated cities and towns. At all places in the state, outside of incorporated cities and towns where a lawfully established public highway crosses any railroad, it shall be the duty of the railroad company owning or operating such railroad to construct and thereafter maintain in proper condition a good and safe crossing.

History: En. Sec. 1, Ch. 148, L. 1919; re-en. Sec. 6625, R.C.M. 1921; re-en. Sec. 6625, R.C.M. 1935; R.C.M. 1947, 72-701.

Cross-References

Roads crossing railroad, 7-14-2612.

Safety of crossings, 69-14-532.

Reflectorized material on crossing signs required, 69-14-612.

69-14-603. Railroad crossings in unincorporated towns or villages. In any unincorporated community ordinarily known as a village or town where the public necessity and convenience require a railroad crossing at the intersection of the railroad with any street or highway, whether lawfully established or otherwise, which is commonly used by the public, the board of county commissioners of the county may order the construction and maintenance of such railroad crossing. Upon such order becoming final and effective, it shall be the duty of the railroad company to construct and maintain in proper condition a good and safe crossing. The board of county commissioners may order more than one railroad crossing in such unincorporated community, as provided in this section, when the public necessity and convenience require more than one such crossing to afford reasonable facilities for public travel.

History: **En. Sec. 2, Ch. 148, L. 1919; re-en. Sec. 6626, R.C.M. 1921; re-en. Sec. 6626, R.C.M. 1935; R.C.M. 1947, 72-702.**

Cross-References

Reflectorized material on crossing signs required, 69-14-612.

69-14-604. Procedure to order construction of crossing. Whenever any board of county commissioners shall order the construction of any railroad crossing, said board shall enter an order upon its minutes, specifying the place of such crossing. A copy of said order shall be served upon the railroad company, and a copy shall also be immediately mailed to the public service commission. Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county.

History: **En. Sec. 3, Ch. 148, L. 1919; re-en. Sec. 6627, R.C.M. 1921; re-en. Sec. 6627, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 72-703.**

69-14-605. Time for completion of crossing. It shall be the duty of a railroad company to construct a crossing ordered by the board of county commissioners of any county within 60 days after service of such order; provided, however, that in case any crossing shall be ordered requiring any extended period of construction, such additional time as is reasonably necessary to complete the same shall be allowed by the commission upon the proper application for such extension.

History: **En. Sec. 4, Ch. 148, L. 1919; re-en. Sec. 6628, R.C.M. 1921; re-en. Sec. 6628, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-704.**

69-14-606. Role of public service commission with respect to crossings. (1) The commission may enforce the orders of any board of county commissioners for the construction of railroad crossings and may pass upon the reasonableness of any such order and modify, change, or annul the same.

(2) Whenever any railroad crossing has been ordered by the county commissioners, as herein provided, the railroad company may, within 30 days after the service of such order, serve upon the commission a notice stating why the order is considered unreasonable or unjust and requesting that the commission hold a hearing for the purpose of determining whether or not the construction of such crossing should reasonably be required. The commission shall thereupon institute a hearing for this purpose, and all interested parties shall be given reasonable notice and an opportunity to be heard. The commission may, after such hearing, either affirm, modify, or annul such order.

History: **En. Secs. 5, 6, Ch. 148, L. 1919; re-en. Secs. 6629, 6630, R.C.M. 1921; re-en. Secs. 6629, 6630, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-705, 72-706; amd. Sec. 50, Ch. 43, L. 1979.**

Cross-References

Power of Public Service Commission with respect to spurs, sidetracks, stockyards, and chutes, 69-14-811, 69-14-812.

69-14-607. Overhead or underground crossings. (1) No railroad crossing, other than a grade crossing, shall be ordered by any board of county commissioners.

(2) (a) The public service commission may, however, upon petition or request in writing of any board of county commissioners, order an overhead or underground crossing at any place where a railroad crossing has not been constructed and is required by the provisions of 69-14-601 through 69-14-611; provided, in its judgment, the safety, necessity, and convenience of the traveling public require such crossing.

(b) When any such petition or request is presented, the commission shall fix a date for hearing the same and shall give at least 10 days' written notice to the board of county commissioners and the owner or operator of the railroad to be affected by such order of the time fixed for the hearing. At such hearing, the commission shall hear all testimony offered as to the safety, necessity, and convenience of the traveling public requiring such a crossing and the expense of constructing and maintaining the same and shall make such investigation and inspection of the conditions at the place of crossing as may be deemed necessary or advisable and shall thereupon determine whether such order should be made.

(3) In the event an overhead or underground crossing is ordered, the commission may in its discretion require the same to be constructed and maintained by and at the expense of the railroad company or may apportion the expense between the railroad company and the county in which said crossing is located. The part of the expense apportioned to said county, if any, shall be paid to the railroad company from the funds of said county properly applicable to the payment of such expense.

History: **En. Sec. 7, Ch. 148, L. 1919; re-en. Sec. 6631, R.C.M. 1921; re-en. Sec. 6631, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-707.**

69-14-608. Court action to determine justness and reasonableness of commission order. The board of county commissioners or the railroad company affected by an order or decision of the commission made pursuant to the provisions of 69-14-601 through 69-14-611 may commence an action in any court having jurisdiction to determine the justness and reasonableness of such order or decision. In any such action the order or decision sought to be reviewed shall prima facie be deemed just, reasonable, and proper.

History: **En. Sec. 8, Ch. 148, L. 1919; re-en. Sec. 6632, R.C.M. 1921; re-en. Sec. 6632, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-708.**

69-14-609. Extension of time to comply with order. In the event of an application to the commission to review any order made by the board of county commissioners and in the event of any action to review any order or decision of the commission, as herein provided, the time within which to comply with said order shall be extended and the railroad company shall have 60 days after the order or decision becomes final and effective within which to comply with the same. The time for compliance as herein provided may be extended, for good cause shown, by the commission.

History: En. Sec. 9, Ch. 148, L. 1919; re-en. Sec. 6633, R.C.M. 1921; re-en. Sec. 6633, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-709.

69-14-610. Effect of crossing provisions on liability of railroad. Nothing contained in 69-14-601 through 69-14-611 shall in any way affect the liability of any railroad company for damage to persons or property injured at any crossings.

History: En. Sec. 10, Ch. 148, L. 1919; re-en. Sec. 6634, R.C.M. 1921; re-en. Sec. 6634, R.C.M. 1935; R.C.M. 1947, 72-710.

Cross-References

Liability, Title 27, ch. 1, part 7.

69-14-611. Penalty for failure to comply with crossing order. Any railroad company failing to construct any crossing after the order or decision requiring the construction of same has become final, within the time herein provided or within any extension of time granted by the commission, shall for each day's failure pay to the state a fine of not less than $10 or more than $100, to be recovered in a civil action in the name of the state, and it shall be the duty of the county attorney of the county within which is located the site of the proposed crossing to prosecute such action.

History: En. Sec. 11, Ch. 148, L. 1919; re-en. Sec. 6635, R.C.M. 1921; re-en. Sec. 6635, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-711.

69-14-612. Reflectorized material on crossing signs required. Within 2 years after April 9, 1987, a railroad company shall install and maintain reflectorized material on the front and back sides of crossbuck blades on all public crossing signs the railroad company is required to construct and maintain under 69-14-602 and 69-14-603.

History: En. Sec. 1, Ch. 448, L. 1987.

69-14-613 through 69-14-620 reserved.

69-14-621 through 69-14-625. Repealed. Sec. 2, Ch. 359, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

69-14-621. (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2)En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-167, R.C.M. 1947; R.C.M. 1947, 72-164(part), 72-167(part).

69-14-622. En. Sec. 2, Ch. 151, L. 1919; re-en. Sec. 3843, R.C.M. 1921; re-en. Sec. 3843, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-165.

69-14-623. En. Sec. 3, Ch. 151, L. 1919; re-en. Sec. 3844, R.C.M. 1921; re-en. Sec. 3844, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-166.

69-14-624. En. Sec. 4, Ch. 151, L. 1919; re-en. Sec. 3845, R.C.M. 1921; re-en. Sec. 3845, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-167(part).

69-14-625. En. Sec. 5, Ch. 151, L. 1919; re-en. Sec. 3846, R.C.M. 1921; re-en. Sec. 3846, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-168.

69-14-626. Prohibition on extended obstruction of highway crossings. (1) It shall be unlawful for any corporation, association, or company to willfully obstruct, blockade, interfere with, or prevent the free use of any public highway within the state where such highway crosses any railroad track outside of incorporated cities and towns by stopping any railroad train, car, engine, or locomotive for more than 15 minutes at any one time or by placing, depositing, or leaving any article or thing whatsoever on any railroad track at the point where any public highway crosses such track outside of incorporated cities and towns.

(2) Any corporation, association, or company so obstructing, blockading, or interfering with the free use of any such highway shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $100. This section shall not be construed as repealing any existing laws prohibiting encroachments upon or obstruction of public highways.

History: En. Sec. 1, Ch. 43, L. 1907; Sec. 4358, Rev. C. 1907; re-en. Sec. 6595, R.C.M. 1921; re-en. Sec. 6595, R.C.M. 1935; R.C.M. 1947, 72-640.

Part 7

Protection of Livestock and Agricultural Resources

Part Cross-References

Funds earmarked for railroad crossings, 15-70-102.

Limitation on action for killing or injuring stock by a railroad, 27-2-207.

Inspection of livestock transported by railroad — exception, 81-3-212.

Driving livestock on railroad tracks, 81-5-102.

69-14-701. Maintenance of fences. (1) Railroad corporations must make and maintain a good and legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass.

(2) In case they do not make and maintain such fence and guards, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals, in all cases, a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed; provided, that nothing herein shall be construed so as to prevent any person from recovering damages from any railroad corporation for its negligent killing or injury to any cattle or other domestic animals at spurs, sidings, Y's, crossings, and turntables.

History: En. Sec. 1, p. 267, L. 1891; en. Sec. 950, Civ. C. 1895; amd. Sec. 1, Ch. 29, L. 1905; amd. Sec. 1, Ch. 59, L. 1907; re-en. Sec. 4308, Rev. C. 1907; re-en. Sec. 6540, R.C.M. 1921; Cal. Civ. C. Sec. 485; re-en. Sec. 6540, R.C.M. 1935; R.C.M. 1947, 72-401.

Cross-References

Negligence, 27-1-701, 27-1-702.

Costs of cattle guards as part of eminent domain proceedings, 70-30-301.

Legal fences defined, 81-4-101.

Where cattle guards are to be maintained, 81-4-102.

69-14-702. Crossings to be maintained. (1) Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state which may fence its right-of-way shall make crossings through its fence and over its roadbed along its right-of-way every 4 miles thereof or as near thereat as may be practicable.

(2) Such openings shall not be less than 60 feet in width.

History: (1)En. Sec. 1, p. 148, L. 1893; re-en. Sec. 959, Civ. C. 1895; re-en. Sec. 4318, Rev. C. 1907; re-en. Sec. 6552, R.C.M. 1921; re-en. Sec. 6552, R.C.M. 1935; Sec. 72-502, R.C.M. 1947; (2)En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; Sec. 72-503, R.C.M. 1947; R.C.M. 1947, 72-502, 72-503(part).

69-14-703. Placement of cattle guards. The railroad company or lessee, person, company, or corporation operating any railroad shall place cattle guards on either side of the openings required by 69-14-702, sufficient to prevent any cattle from entering upon the right-of-way enclosed.

History: En. Sec. 2, p. 148, L. 1893; re-en. Sec. 960, Civ. C. 1895; re-en. Sec. 4319, Rev. C. 1907; re-en. Sec. 6553, R.C.M. 1921; re-en. Sec. 6553, R.C.M. 1935; R.C.M. 1947, 72-503(part).

Cross-References

Costs of cattle guards as part of eminent domain proceedings, 70-30-301.

Where cattle guards are to be maintained, 81-4-102.

69-14-704. Openings under trestles. The railroad company, lessee, person, or company operating any railroad, in addition to the openings required by 69-14-702, shall leave unfenced any places where the railroad runs over trestles that are sufficiently high for cattle to go underneath the same.

History: En. Sec. 3, p. 148, L. 1893; re-en. Sec. 961, Civ. C. 1895; re-en. Sec. 4320, Rev. C. 1907; re-en. Sec. 6554, R.C.M. 1921; re-en. Sec. 6554, R.C.M. 1935; R.C.M. 1947, 72-504.

69-14-705. Application of provisions dealing with crossings. The provisions of 69-14-702 through 69-14-706 shall only apply to grazing country.

History: En. Sec. 4, p. 148, L. 1893; re-en. Sec. 962, Civ. C. 1895; re-en. Sec. 4321, Rev. C. 1907; re-en. Sec. 6555, R.C.M. 1921; re-en. Sec. 6555, R.C.M. 1935; R.C.M. 1947, 72-505.

69-14-706. Violation of crossing provisions. Any railroad corporation or lessee, person, company, or corporation operating any railroad in this state violating the provisions of 69-14-702 through 69-14-705 shall be deemed guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be fined in a sum not less than $100 and not more than $500.

History: En. Sec. 5, p. 148, L. 1893; re-en. Sec. 963, Civ. C. 1895; re-en. Sec. 4322, Rev. C. 1907; re-en. Sec. 6556, R.C.M. 1921; re-en. Sec. 6556, R.C.M. 1935; R.C.M. 1947, 72-506.

69-14-707. Liability for negligent destruction of domestic animals. Every railroad corporation or company operating any railroad or branch thereof within the limits of this state which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, mule, cow, heifer, bull, ox, steer, calf, or other domestic animal by running any engine or car over or against any such animal shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

History: En. Sec. 1, p. 68, L. 1881; re-en. Sec. 713, 5th Div. Comp. Stat. 1887; amd. Sec. 951, Civ. C. 1895; re-en. Sec. 4309, Rev. C. 1907; re-en. Sec. 6541, R.C.M. 1921; re-en. Sec. 6541, R.C.M. 1935; R.C.M. 1947, 72-402.

Cross-References
Negligence, 27-1-701, 27-1-702.

69-14-708. Records of accidents involving animals. (1) It shall be the duty of any corporation, association, company, or person owning, controlling, or operating any railroad or branch thereof in this state to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book and within 30 days after the killing or injuring of any animal, to cause to be entered therein the date when and the place where the same was killed or injured, as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done. When such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the written demand provided for in 69-14-709 may be served on the agent of such station.

(2) This book shall be kept for the inspection of any person claiming to be interested in the inspection thereof.

(3) Notice of the station designated pursuant to subsection (1) shall be filed with the county clerk of the county in which said station is situated.

(4) Any corporation, association, or person so owning, controlling, or operating such railroad or branch thereof failing to designate said station, file said notice, keep said book, and make the entries as provided in this section shall be liable to the owner of the animal so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof may in its discretion render verdict and judgment for the amount of the value of any such animal so killed or the amount of damages sustained by reason of any injury thereto.

History: (1) thru (3)En. Sec. 3, p. 70, L. 1881; amd. Sec. 720, 5th Div. Comp. Stat. 1887; amd. Sec. 953, Civ. C. 1895; amd. Sec. 2, Ch. 29, L. 1905; re-en. Sec. 4311, Rev. C. 1907; re-en. Sec. 6542, R.C.M. 1921; re-en. Sec. 6542, R.C.M. 1935; Sec. 72-403, R.C.M. 1947; (4)En. Sec. 721, 5th Div. Comp. Stat. 1887; re-en. Sec. 954, Civ. C. 1895; re-en. Sec. 4312, Rev. C. 1907; re-en. Sec. 6543, R.C.M. 1921; re-en. Sec. 6543, R.C.M. 1935; Sec. 72-404, R.C.M. 1947; R.C.M. 1947, 72-403, 72-404; amd. Sec. 72, Ch. 83, L. 1989.

69-14-709. Allowance of attorney's fee. (1) Except as provided in subsection (2), whenever any of the livestock referred to in this part shall be injured or killed as therein recited and the owner thereof shall thereafter institute an action for the recovery of the loss or damage so sustained by him, the court in which such action shall be brought shall tax, as a part of the costs therein, a reasonable sum to be fixed by the court as a fee to the attorney of the prevailing or successful party for conducting such action. Said fee so fixed and allowed shall be collected in like manner as other costs.

(2) No such fee shall be allowed by the court or collected from the defendant when it shall appear from the pleadings or proof in any such action that the defendant prior to the institution of such action offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed, a

sum equal to or in excess of the amount recovered as damages in said action or unless the plaintiff, at least 40 days prior to the commencement of the action, shall have made demand, in writing, upon the defendant, his agent, or attorney for the sum of money claimed as indemnity for the killing of said livestock.

History: En. Sec. 722, 5th Div. Comp. Stat. 1887; amd. Sec. 955, Civ. C. 1895; amd. Sec. 1, Ch. 101, L. 1903; re-en. Sec. 4313, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1919; amd. Sec. 1, Ch. 226, L. 1921; re-en. Sec. 6544, R.C.M. 1921; re-en. Sec. 6544, R.C.M. 1935; R.C.M. 1947, 72-405.

Cross-References

Costs, Title 25, ch. 10.

69-14-710. Tender or deposit of value of animal. If a corporation, association, company, or person so owning, controlling, or operating a railroad or branch thereof kills or injures an animal as aforesaid and tenders to the owner thereof or to his agent in that behalf the amount which they consider to be the value thereof or the damage thereto, as the case may be or if the railroad, corporation, association, company, or person deposits with the department of livestock such amount for the owner thereof and the owner or his agent refuses to accept the amount in settlement thereof, then the owner shall pay all costs incurred in any action instituted, after the tender or deposit, to recover the value or damage unless he recovers in the action more than the amount so tendered.

History: En. Sec. 723, 5th Div. Comp. Stat. 1887; re-en. Sec. 956, Civ. C. 1895; re-en. Sec. 4314, Rev. C. 1907; re-en. Sec. 6545, R.C.M. 1921; re-en. Sec. 6545, R.C.M. 1935; amd. Sec. 15, Ch. 315, L. 1974; R.C.M. 1947, 72-406.

69-14-711. Payment of damages to department of livestock. (1) If livestock are killed by railroad corporations in violation of 69-14-701 and if the owner of the livestock does not claim or assert a claim against the railroad or railroad corporation for the value of the livestock killed within 6 months from the date the animal is killed, the department of livestock shall demand from the railroad or railroad corporation payment in damages for livestock. The department shall institute and prosecute, in the name of the state, actions against the railroad or railroad companies in a court of competent jurisdiction to recover damages if the railroad fails, neglects, or refuses to make payment of the amount of the claim filed by the department.

(2) The money recovered shall be paid to the department and shall be held by the department for a period of 2 years after the date of its receipt. If the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed within the 2 years, the money shall be paid to the state treasurer and credited to the stock estray fund. If the owner of the animal killed proves his claim within the 2 years, the department may pay the claimant the amount of money to which he is entitled for the animal killed by the railroad or railroad company, the damages for which have been collected by the department.

(3) In actions prosecuted for the recovery of the value of livestock killed under this section, the prevailing or successful party shall recover all costs. If the owner of an animal killed has not presented his claim against the railroad or railroad company which caused it to be killed, a settlement made

by the department constitutes a bar against an action by the owner of the animal.

History: En. Sec. 1, Ch. 183, L. 1907; Sec. 4315, Rev. C. 1907; amd. Sec. 2, Ch. 99, L. 1919; re-en. Sec. 6546, R.C.M. 1921; re-en. Sec. 6546, R.C.M. 1935; amd. Sec. 16, Ch. 315, L. 1974; R.C.M. 1947, 72-407.

Cross-References

Legal assistance for Public Service Commission, 69-14-132.

69-14-712. Disposition of carcass and hide of destroyed animals. (1) In all cases where a corporation, association, company, or person kills an animal or injures an animal to such extent that it is necessary to kill the animal, as provided in this part, they shall skin the animal and preserve the whole hide or so much thereof as can be preserved, including the head and ears, and are entitled to the carcass and hide thereof unless the owner or owners thereof claim the animal, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. In case such corporation, association, company, or person so entitled thereto takes the carcass and hide, they shall skin the animal as herein provided and shall deposit the hide thereof at the station designated on their line, such station to be designated by the department of livestock, during the space of 60 days, for the inspection of persons claiming to be interested therein. If no person claims the animal, then before the corporation, association, company, or person disposes of the hide, they shall notify the stock inspector of the district within which the animal was killed, who shall inspect the hide for marks and brands, and receive from the stock inspector his authority in writing to dispose of the hide. The stock inspector shall notify all owners of the stock, if known or ascertainable from the inspection, of the death of the animal, and if the owner is unknown, the stock inspector shall notify the department of the death of the animal.

(2) The corporation, association, company, or person may dispose of the whole animal, including the carcass and hide, to any licensed rendering plant or licensed renderer in the state if the owner or owners do not claim the animal. Upon receiving the animal, the licensed rendering plant or licensed renderer shall skin the animal and shall preserve the hide or so much thereof as can be preserved, including the hide of head and ears, and the hide shall be stored separate and apart from hides received from other sources. Within 5 days after receipt of the hide, the licensed rendering plant or licensed renderer shall notify the department of possession of the hide. The department shall make an inspection thereof within 10 days after being so notified and shall immediately notify the owner thereof, if ownership be ascertainable, of the death of the animal. If no person claims the hide of the animal within 30 days after notice given to the department by the licensed renderer or licensed rendering plant, the department shall give written authorization to the licensed rendering plant or licensed renderer to dispose of the hide. Before making disposition thereof under the written authorization, the licensed rendering plant or licensed renderer shall obtain the consent of the corporation, association, company, or person from which the animal was received.

History: **En. Sec. 726, 5th Div. Comp. Stat. 1887; re-en. Sec. 958, Civ. C. 1895; re-en. Sec. 4317, Rev. C. 1907; amd. Sec. 3, Ch. 99, L. 1919; re-en. Sec. 6548, R.C.M. 1921; re-en. Sec. 6548, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1949; amd. Sec. 17, Ch. 315, L. 1974; R.C.M. 1947, 72-409.**

Cross-References

Dead or fallen animal records, 81-9-313, 81-9-315, 81-9-316.

69-14-713. Violation of provisions dealing with injury to livestock. (1) Except as otherwise provided, every person who violates any of the provisions of 69-14-701 through 69-14-712 relating to livestock killed or injured by railroads is guilty of a misdemeanor.

(2) Any person violating any of the provisions of 69-14-711 or 69-14-712 shall upon conviction thereof be punished by a fine of not less than $10 or more than $300 or by imprisonment in the county jail for a period of not less than 10 days or more than 60 days or by both such fine and imprisonment.

History: **(1)En. Sec. 720, Pen. C. 1895; re-en. Sec. 8561, Rev. C. 1907; re-en. Sec. 11278, R.C.M. 1921; re-en. Sec. 11278, R.C.M. 1935; Sec. 94-35-174, R.C.M. 1947; redes. 72-507 by Sec. 29, Ch. 513, L. 1974; Sec. 72-507, R.C.M. 1947; (2)En. Sec. 4, Ch. 99, L. 1919; amd. Sec. 1, Ch. 49, L. 1921; re-en. Sec. 6549, R.C.M. 1921; re-en. Sec. 6549, R.C.M. 1935; Sec. 72-410, R.C.M. 1947; R.C.M. 1947, 72-410, 72-507; amd. Sec. 51, Ch. 43, L. 1979.**

69-14-714 through 69-14-720 reserved.

69-14-721. Control of fire hazard along right-of-way. It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track and either side thereof for a distance of 100 feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds, or any dangerous or combustible material. Any railroad company or corporation failing to keep its railroad track and each side thereof free as specified above shall be liable for any damages which may occur from fire emanating from operating such railroad. A neglect to comply with the provisions of this section in keeping free any railroad track and either side for a distance equal to the space of ground covered by the grant of the right-of-way for the railroad corporation or company shall be prima facie evidence of negligence on the part of any such railroad corporation or company. No railroad corporation or company shall be required to keep free, as specified above, any land not a part of its right-of-way.

History: **En. Sec. 7, p. 71, L. 1881; re-en. Sec. 719, 5th Div. Comp. Stat. 1887; amd. Sec. 952, Civ. C. 1895; re-en. Sec. 4310, Rev. C. 1907; re-en. Sec. 6551, R.C.M. 1921; re-en. Sec. 6551, R.C.M. 1935; R.C.M. 1947, 72-501.**

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

Reduction of slash and debris along right-of-way, 76-13-407.

69-14-722. Maintenance of fireguards. (1) Every railroad corporation operating its lines of road or any part thereof within this state shall, between April 15 and July 1 in each year, plow in a good and workmanlike manner, covering the sod well, upon each side of its line of road, wherever it passes through a range or grazing country, a continuous strip of not less than 6 feet in width on each side of its track, as a fireguard. Said strip shall, as near as practicable, run parallel with the line or lines of said railroad, and in addition to such plowing, said railroad company shall cause to be burned, between July 15 and September 15 of each year, all the grass and vegetation between the said plowed strips and a line of 50 feet inside said plowed strips. Said plowing shall be not less than 300 feet from the center of the railroad track on each side of same except in cases of cultivated fields, and then such plowing and burning shall be done closer to such railroad but not less than 70 feet from the center of the track.

(2) Such fireguard, so plowed and burned, need not be constructed within the limits of any town, village, or city; in private fields under cultivation; along the line of such railroad whenever the same runs through the mountains; or elsewhere where such plowing or burning would be impracticable. Said fireguard or portion thereof need not be plowed or burned on or through any lands which may be released from the operation of this section by the board of county commissioners of the county wherein such land is situated, by their written certificate of release filed in the office of the county clerk of the county.

(3) If any railroad company fails to comply with any of the provisions of this section, the board of county commissioners of the county wherein such violation occurs shall cause the neglected plowing, burning, or both to be done and may, in a suit to be brought in their name as said board in the district court having jurisdiction, recover double the amount of the cost of such plowing, burning, or both, with reasonable attorney fees to be fixed by the court. Such railroad company shall be liable further for all damages caused by its failure to comply with this section.

History: (1), (2)En. Sec. 1, p. 163, L. 1901; amd. Sec. 1, Ch. 63, L. 1903; re-en. Sec. 4360, Rev. C. 1907; re-en. Sec. 6597, R.C.M. 1921; re-en. Sec. 6597, R.C.M. 1935; Sec. 72-642, R.C.M. 1947; (3)En. Sec. 2, p. 164, L. 1901; amd. Sec. 2, Ch. 63, L. 1903; re-en. Sec. 4361, Rev. C. 1907; re-en. Sec. 6598, R.C.M. 1921; re-en. Sec. 6598, R.C.M. 1935; Sec. 72-643, R.C.M. 1947; R.C.M. 1947, 72-642, 72-643.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Penalty for setting or leaving fire causing damage, 50-63-102.

Liability of offender for damages and costs, 50-63-103.

Part 8

Loading Platforms and Spurs

69-14-801. Maintenance of loading platform by railroad. (1) Every railroad company doing business in this state shall, within 60 days after notice from the commission, erect one or more platforms for the transfer of livestock, grain, and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice, such platforms to be erected so as not to endanger life and property.

(2) If any railroad company, after receiving notice as provided for in this section, shall fail, refuse, or neglect to erect platforms as required by this section within the required 60 days, the commission is authorized and empowered and it is made its duty to notify such railroad company to appear before it at a certain time and place and show cause, if there is any, why such commission should not issue an order requiring such railroad company to comply with the requirements of this section. The commission shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platform if the commission shall upon such examination and hearing deem such platform necessary.

(3) Any notice required to be served upon any railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of such platforms may be served upon any agent of said company within the state.

History: En. Sec. 1, Ch. 26, L. 1913; re-en. Sec. 3822, R.C.M. 1921; re-en. Sec. 3822, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-145; amd. Sec. 1, Ch. 108, L. 1979.

69-14-802. Repealed. Sec. 2, Ch. 108, L. 1979.

History: En. Sec. 2, Ch. 26, L. 1913; re-en. Sec. 3823, R.C.M. 1921; re-en. Sec. 3823, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-146; amd. Sec. 52, Ch. 43, L. 1979.

69-14-803. Enlargement of platform. The commission shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platform is, in its judgment, clearly insufficient for the accommodation of the public.

History: En. Sec. 3, Ch. 26, L. 1913; re-en. Sec. 3824, R.C.M. 1921; re-en. Sec. 3824, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-147.

69-14-804. Erection of scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right-of-way, for weighing and shipping purposes.

History: En. Sec. 4, Ch. 26, L. 1913; re-en. Sec. 3825, R.C.M. 1921; re-en. Sec. 3825, R.C.M. 1935; R.C.M. 1947, 72-148.

Cross-References

Systems of weights and measures, 30-12-102.

State standards of weight and measure, 30-12-103.

69-14-805. Violations of loading platform provisions. Every railroad company neglecting or refusing to comply with the requirements of 69-14-801 and 69-14-803 through 69-14-805 shall be deemed guilty of a misdemeanor and be subject to a fine of not less than $500 for every 30 days such failure shall continue after notice as aforesaid.

History: En. Sec. 5, Ch. 26, L. 1913; re-en. Sec. 3826, R.C.M. 1921; re-en. Sec. 3826, R.C.M. 1935; R.C.M. 1947, 72-149; amd. Sec. 130, Ch. 370, L. 1987.

69-14-806 through 69-14-810 reserved.

69-14-811. Industrial and commercial spurs. (1) Except as provided in subsection (2), the commission shall have full power and authority, after notice and hearing, to compel railroad companies operating in the state to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities. Any such industrial or commercial spur shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs.

(2) (a) Any such industrial or commercial spur will not exceed 1 mile in length from headblock to end of track.

(b) Such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards or at sidings unless such stations, yards, sidings, or spurs are more than 7 miles apart or unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main-line operation.

History: En. Sec. 4, Ch. 136, L. 1909; re-en. Sec. 3829, R.C.M. 1921; re-en. Sec. 3829, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-152.

69-14-812. Power of commission with respect to sidetracks, stockyards, and chutes. The commission shall have full power and authority, after notice and hearing, to compel railroads, railways, or common carriers operating within the state to construct or extend public loading or unloading tracks at stations and shall likewise have full power and authority to compel the construction or extension of stockyards, stockchutes, or stockpens whenever the necessity therefor has been established to the satisfaction of the commission.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-813. Removal of sidetrack, spur track, or loading facility. (1) Where a sidetrack, spur track, or loading and unloading facility has been constructed for and used exclusively by a single shipper or industry and is not used by the public and the individual shipper or industry requests that such track or facility be removed from its property, then such removal may be made by giving notice of such request for removal to the commission and without necessity for approval of such removal.

(2) In the event such sidetrack, spur track or stock facility formerly used by the public has not been used by the public for loading or unloading rail shipments for a period of 5 years and proof thereof is established by affidavit of a railroad officer having knowledge thereof, then such installation or facility may be removed after the railroad involved has given 90 days' notice to the public service commission and to the consumer counsel unless the commission, within the 90-day period, notifies the railroad that such removal may not be made until approval by the commission. In which case, the commission shall set a public hearing, within 90 days of such notice to the railroad, to determine whether public convenience and necessity requires the continued maintenance of such installation or facility.

History: En. Sec. 3, Ch. 105, L. 1913; re-en. Sec. 3837, R.C.M. 1921; re-en. Sec. 3837, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; amd. Sec. 1, Ch. 464, L. 1975; R.C.M. 1947, 72-159(part).

69-14-814. Violations of sidetrack, spur track, or loading facility provisions. Any railroad, railway company, or common carrier and its officers or agents who shall refuse or fail to comply with the provisions of 69-14-812 or 69-14-813 or any order or rule relative thereto made by the commission shall be subject to a fine of not less than $25 or more than $50. Each day of such refusal or failure shall be deemed a separate offense and shall be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the commission in any court of competent jurisdiction.

History: En. Sec. 7, Ch. 105, L. 1913; re-en. Sec. 3841, R.C.M. 1921; re-en. Sec. 3841, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-163(part).

Cross-References

Violations — general provision, 69-14-137.

Part 9

Grain and Commodity Storage and Transportation

69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way. (1) Any person, firm, or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment, or storage of grain (including flaxseed) for the public for hire may make application in writing, containing a description of that portion of the right-of-way of said railroad on which such person, firm, or corporation desires to erect a warehouse or elevator, the size and capacity of the warehouse or elevator proposed to be erected, and the time for which it is desired to maintain such warehouse or elevator, to the person, firm, or corporation owning, leasing, or operating the railroad at such station or siding, for the right, privilege, and easement of erecting and maintaining for the time stated in such application and for reasonable compensation for such warehouse or elevator, as aforesaid, upon the right-of-way pertaining to such railway at such siding or station and within and between the outside switches of the yard of such railway station or siding, and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege, and easement aforesaid, shall absolutely and unconditionally be entitled to the same.

(2) The application shall also state the amount the applicant deems reasonable compensation for the right, privilege, and easement he desires to acquire, and said applicant shall tender and pay to such person, firm, or corporation from whom such easement is sought the sum stated in such application.

(3) If the person, firm, or corporation owning, leasing, or operating the railroad is not willing that the portion of the right-of-way selected by the applicant should be appropriated for such purpose and the parties cannot agree as to the quantity and location of the land upon which such grain warehouse or grain elevator shall be erected, the matter shall be determined by the district court in the same manner and by the same proceeding for

determining the amount of compensation to be paid where the parties cannot agree as to the amount.

History: **(1), (3)En. Sec. 1, Ch. 43, L. 1913; re-en. Sec. 6638, R.C.M. 1921; re-en. Sec. 6638, R.C.M. 1935; Sec. 88-201, R.C.M. 1947; (2)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; R.C.M. 1947, 88-201, 88-202(part).**

Cross-References

Easements, Title 70, ch. 17, part 1.

Warehousemen of agricultural commodities, Title 80, ch. 4, part 5.

69-14-902. Decision on application by railroad. It shall be the duty of any person, firm, or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of 69-14-901 through 69-14-911, within 30 days after the receipt of such application, to notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege, and easement sought to be acquired. In case such person, firm, or corporation fails to notify the applicant within said 30 days, such person, firm, or corporation shall be deemed to have accepted said amount, and upon the payment or tender thereof, said applicant shall be deemed to have acquired the right, privilege, and easement applied for.

History: **En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; R.C.M. 1947, 88-202(part).**

69-14-903. Court action to resolve differences. (1) In case the amount so named in the application and tendered is not accepted and the parties cannot agree on the amount to be paid for such right, privilege, and easement, the same shall be ascertained, assessed, and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege, and easement sought is situated. The court is hereby given full jurisdiction in the premises and shall at all times be deemed open and in session for the purposes of 69-14-901 through 69-14-911.

(2) Proceedings in the district court shall be instituted and carried on as provided in 69-14-904.

History: **(1)En. Sec. 2, Ch. 43, L. 1913; re-en. Sec. 6639, R.C.M. 1921; re-en. Sec. 6639, R.C.M. 1935; Sec. 88-202, R.C.M. 1947; (2)En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; Sec. 88-203, R.C.M. 1947; R.C.M. 1947, 88-202(part), 88-203(part).**

69-14-904. Procedure in district court. (1) The parties seeking the right, privilege, and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege, and easement sought, the time for which the same is sought, and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor.

(2) A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time not more than 30 days thereafter within which the person, firm, or corporation so owning, managing, or controlling such railroad shall appear and join issue in said proceeding. Such notice shall be served as a summons is served in civil actions and shall be ample notice to the parties so served to appear and join in the proceedings and shall be ample to give the

court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding.

(3) The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law.

(4) The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation, both in the form of an annual rental and in the form of a gross sum, for the right, privilege, and easement sought. Immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found. In case such election is not made by said party, then the other party to the proceedings may make such election. After election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege, and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid and for the time therein specified. Thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege, and easement aforesaid.

History: En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).

Cross-References

Contents of Writ of Execution, Title 25, ch. 13, part 3.

Service of summons, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Easements, Title 70, ch. 17, part 1.

69-14-905. Right to supreme court review. Within 30 days after the entry of said judgment, as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court. Such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege, and easement asked for by the petition and conferred by the judgment if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal, the judgment shall be suspended pending the appeal.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

Cross-References

Stay of judgment or order pending appeal, Rule 7, M.R.App.P. (see Title 25, ch. 21).

69-14-906. Payment of court costs. Costs and disbursements, as in civil actions, in each court shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. If the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party.

History: En. Sec. 4, Ch. 43, L. 1913; re-en. Sec. 6641, R.C.M. 1921; re-en. Sec. 6641, R.C.M. 1935; R.C.M. 1947, 88-204(part).

Cross-References

Costs, Title 25, ch. 10.

69-14-907. Elevators and warehouses considered public. All elevators and warehouses erected and maintained under the provisions of 69-14-901 through 69-14-911 shall be deemed public elevators and public warehouses and shall be subject to legislative control.

History: En. Sec. 5, Ch. 43, L. 1913; re-en. Sec. 6642, R.C.M. 1921; re-en. Sec. 6642, R.C.M. 1935; R.C.M. 1947, 88-205.

Cross-References

Warehousemen of agricultural commodities, Title 80, ch. 4, part 5.

69-14-908. Prompt payment of rental required. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid after 30 days' default, the right, privilege, and easement aforesaid shall be absolutely forfeited.

History: En. Sec. 3, Ch. 43, L. 1913; re-en. Sec. 6640, R.C.M. 1921; re-en. Sec. 6640, R.C.M. 1935; R.C.M. 1947, 88-203(part).

69-14-909. Time limit for construction of elevator or warehouse. Any person, firm, or corporation availing itself of the provisions of 69-14-901 through 69-14-911 shall, within 60 days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator mentioned in the application and complete the same within 90 days thereafter. In case of failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right-of-way described in the application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of 69-14-901 through 69-14-911.

History: En. Sec. 6, Ch. 43, L. 1913; re-en. Sec. 6643, R.C.M. 1921; re-en. Sec. 6643, R.C.M. 1935; R.C.M. 1947, 88-206.

69-14-910. Connection of railroad to elevator or warehouse. (1) Every railroad company or corporation organized under the laws of this state or doing business therein shall, upon application in writing, provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right-of-way at stations. Every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouse or elevator, without reference to its size, cost, or capacity, where grain is or may be stored. Such railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right-of-way. The reasonable cost of the construction of such sidetracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such sidetracks are provided or connections made.

(2) Where stations are 10 miles or more apart, the railroad company, when required to do so by the public service commission, shall construct and maintain a sidetrack for the use of shippers between such stations.

History: **En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).**

69-14-911. Location of facility. Such elevators and warehouses shall not be constructed within 100 feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road.

History: **En. Sec. 7, Ch. 43, L. 1913; re-en. Sec. 6644, R.C.M. 1921; re-en. Sec. 6644, R.C.M. 1935; amd. Sec. 21, Ch. 315, L. 1974; R.C.M. 1947, 88-207(part).**

69-14-912 through 69-14-920 reserved.

69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in bulk. (1) All boxcars furnished by railroad or railway companies for the transportation of grain or other commodities in bulk shall be of such construction and in such order as to prevent leakage when such commodities are placed or hauled therein. It is hereby made the duty of all railroad or railway companies to furnish such cars in such condition.

(2) Whenever boxcars placed for loading grain or other commodities in bulk are found to be in such condition that they will not afford safe transportation for such commodities, the railroad or railway company shall, upon written complaint to the agent or other person in authority by the shipper or his representative who proposes to load said car or cars and within 24 hours, cause said car or cars to be properly cleaned and coopered and put in such repair as will afford safe transportation for the commodity to be shipped.

History: **(1)En. Sec. 1, Ch. 52, L. 1917; re-en. Sec. 6613, R.C.M. 1921; re-en. Sec. 6613, R.C.M. 1935; Sec. 72-656, R.C.M. 1947; (2)En. Sec. 2, Ch. 52, L. 1917; re-en. Sec. 6614, R.C.M. 1921; re-en. Sec. 6614, R.C.M. 1935; Sec. 72-657, R.C.M. 1947; R.C.M. 1947, 72-656, 72-657.**

Cross-References

Carriers of property, Title 69, ch. 11, part 4.

69-14-922. Action by shipper to render cars suitable. (1) In case such railroad or railway company shall fail within 24 hours after written complaint has been made by the shipper or his representative to clean and safely cooper such car or cars, then such shipper or his representative shall have authority to enter upon such car or cars and properly and safely cooper and clean the same. Said railroad or railway company shall pay for the labor expended in such repairs at the rate of $3 per 8-hour day and the actual cost of material used, providing that such charge shall in no case exceed $5 for each car so coopered.

(2) In case any car or cars are placed at a station or siding where there is no representative of said railroad or railway company upon whom complaint may be served, then and in such case the shipper or his representative may at once enter upon the said car or cars and clean and make such repairs as

are necessary and shall be paid for the labor and material expended, as provided in subsection (1).

History: (1)En. Sec. 3, Ch. 52, L. 1917; re-en. Sec. 6615, R.C.M. 1921; re-en. Sec. 6615, R.C.M. 1935; Sec. 72-658, R.C.M. 1947; (2)En. Sec. 4, Ch. 52, L. 1917; re-en. Sec. 6616, R.C.M. 1921; re-en. Sec. 6616, R.C.M. 1935; Sec. 72-659, R.C.M. 1947; R.C.M. 1947, 72-658, 72-659.

69-14-923. Demurrage not to accrue during repairs. It is further provided that no demurrage shall accrue or be collected for the time elapsing while such car or cars are being repaired or cleaned or coopered in accordance herewith.

History: En. Sec. 5, Ch. 52, L. 1917; re-en. Sec. 6617, R.C.M. 1921; re-en. Sec. 6617, R.C.M. 1935; R.C.M. 1947, 72-660.

69-14-924. Liability of railroad for repairs. Any person making the repairs upon or cleaning or coopering the cars of any railroad or railway company as herein provided may recover the amounts expended therefor in an action at law upon the refusal of the railroad or railway company to reimburse him.

History: En. Sec. 6, Ch. 52, L. 1917; re-en. Sec. 6618, R.C.M. 1921; re-en. Sec. 6618, R.C.M. 1935; R.C.M. 1947, 72-661.

69-14-925. Enforcement of provisions related to suitable cars for commodity shipments. It is hereby made the duty of the commission to enforce the provisions of 69-14-921 through 69-14-924.

History: En. Sec. 7, Ch. 52, L. 1917; re-en. Sec. 6619, R.C.M. 1921; re-en. Sec. 6619, R.C.M. 1935; amd. Sec. 20, Ch. 315, L. 1974; R.C.M. 1947, 72-662.

69-14-926 through 69-14-930 reserved.

69-14-931. Definitions. As used in 69-14-932 and this section, the following definitions apply:

(1) "Fair market value" means:

(a) the price negotiated between the parties under 69-14-932; or

(b) the appraised value as determined by a certified appraisal under 69-14-932.

(2) "Leaseholder" means a person who holds a lease or permit with respect to land adjacent to a railroad right-of-way and who has constructed or owns buildings on the land that have an appraised value of $5,000 or more.

(3) "Right-of-way" means land upon which a railroad has or has had tracks.

History: En. Sec. 1, Ch. 814, L. 1991.

Compiler's Comments

Effective Date: Section 7, Ch. 814, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

69-14-932. First right to purchase or match offer — lease preference — negotiation process — exception. (1) A person or entity that has a leasehold site between a point 8.5 feet from the centerline of the track nearest the edge of the right-of-way and 300 feet from the track centerline and that uses the leasehold for transporting grain, seed, or related agricultural input commodities, regardless of the status of train operations, has a right of first refusal to purchase the land in the event the owner seeks to sell the land or transfer the leasehold estate.

(2) The leaseholder of a leasehold site described in subsection (1) must be given the opportunity to match a competing lease offer upon expiration of an existing lease. If the leaseholder matches the new lease offer, the lease must be given to the leaseholder. When a person other than the current leaseholder becomes the lessee of a leasehold site described in subsection (1) or the lease is terminated by the lessor for reasons other than nonpayment or other material breach of the lease, the lessor or new lessee shall compensate the former leaseholder for the fair market value of improvements made by the former leaseholder.

(3) The owner of the land may not sell or offer for sale an interest in the leased land or dispossess the leaseholder for reasons other than nonpayment or other material breach of the lease unless he first extends to the leaseholder a written offer to sell the leased land to the leaseholder at fair market value. The leaseholder shall respond to the offer within 60 days of receipt of the offer.

(4) The owner shall negotiate in good faith with the leaseholder for a period not to exceed 90 days following the leaseholder's response to the written offer provided for in subsection (3). The land may not be sold or transferred during the response and negotiation periods.

(5) (a) If the owner and the leaseholder cannot agree on the fair market value, they shall appoint a certified appraiser to establish the fair market value.

(b) In the event that the owner and leaseholder cannot agree on an appraiser, each shall appoint a certified appraiser who shall make an independent appraisal. If the appraisals are within 5% of each other, the average of the two appraisals must constitute the fair market value.

(c) If the two appraisals differ by more than 5%, the two appraisers must appoint a third certified appraiser whose appraisal must establish the fair market value.

(d) If the leaseholder fails to close the purchase of the leasehold estate for any reason within 45 days after the fair market value of the land has been established by the appraisal process provided for in this section, the right of first refusal is extinguished and the owner is free to transfer the property to a person or entity other than the leaseholder.

(e) The owner may transfer a title under this section by quitclaim deed rather than warranty deed.

(6) This section does not apply to the sale of an entire operating railroad line by one operating railroad to another entity for the purpose of operating a railroad.

History: En. Sec. 2, Ch. 814, L. 1991.

Compiler's Comments

Effective Date: Section 7, Ch. 814, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

Part 10

Railroad Personnel

Part Cross-References

Licensure of plumbing work in railroad not required, 37-69-102.

Limitation of hours worked in tunnel, 39-4-103.

Workers' compensation not applicable to certain railroad workers, 39-71-401.

Employment of children by railroad prohibited, 41-2-101.

Penalty for derailment of railroad cars, 45-8-113.

Penalty for abandonment of animal on railroad, 45-8-211.

Deaf and blind persons to be given equal accommodations, 49-4-211.

69-14-1001. Protection of employees affected by closure, consolidation, or centralization of station or other facility. (1) Whenever any railroad, as defined in 69-14-101, is granted the authority to close, consolidate, or centralize a railroad station or facility by order of the commission, the commission shall require employee protection. Before the commission may approve closure, consolidation, or centralization of a station or facility, it shall require from the railroad an agreement to protect each employee affected by the closure, consolidation, or centralization by providing a job at least equal in nature and pay to the job held by the employee for the 6 months prior to the closure, consolidation, or centralization or, if such job does not exist, compensation pay equal to that rate held by the employee 6 months prior to closure, consolidation, or centralization. The equal job and pay agreement must be in effect for a period of 4 years or, in the alternative, the number of years the employee has been employed prior to closure, consolidation, or centralization, whichever is shorter.

(2) Notwithstanding any other provisions of this section, an agreement pertaining to protection of the interests of affected employees may be entered into between the railroad and duly authorized representatives of the employees.

History: En. Sec. 1, Ch. 377, L. 1973; R.C.M. 1947, 72-169; amd. Sec. 53, Ch. 43, L. 1979; amd. Sec. 1, Ch. 436, L. 1983.

69-14-1002. Compensation of employees on removal of railroad division point or terminal. (1) Except as provided in subsection (2), when any railroad or railway company operating its line of road in, into, or through the state shall move any of its division points or terminals, it shall be liable to any employee of such railroad or railway company for any damage sustained by such employee by reason of any decrease in value of any real property actually occupied by such employee as his place of residence, which decrease in value shall be caused by reason of the removal of such division point or terminal; provided, such employee shall have in such property so damaged an estate of freehold. Such damages shall be collectable in any court of competent jurisdiction.

(2) When any railroad or railway company in good faith determines upon a change or removal of any division point or terminal and in good faith posts prominently about its station house, shops, and yards a statement of its

intention to do so, in such manner as to give reasonable notice thereof to such employee, it shall not be liable, as hereinbefore provided, for any decrease in value of any interest in any property purchased after the time of such posting provided that such division point or terminal shall be changed or removed within 6 months after the date of such posting.

History: (1)En. Sec. 1, Ch. 159, L. 1921; re-en. Sec. 6623, R.C.M. 1921; re-en. Sec. 6623, R.C.M. 1935; Sec. 72-666, R.C.M. 1947; (2)En. Sec. 2, Ch. 159, L. 1921; re-en. Sec. 6624, R.C.M. 1921; re-en. Sec. 6624, R.C.M. 1935; Sec. 72-667, R.C.M. 1947; R.C.M. 1947, 72-666, 72-667.

69-14-1003. Railroad personnel as law officers. Every conductor, engineer, or other person in charge of the operation of cars, trains, or locomotives upon any railroad is, while so engaged or employed, constituted a public executive officer of the class of peace officers and of the grade of constable in each county wherein his train, cars, or locomotives may from time to time happen to be and has the same authority as other peace officers to, with or without a warrant, arrest and prosecute persons trespassing or illegally obtaining passage on the railroad. The railroad personnel mentioned herein shall not be entitled to receive fees for any arrest or prosecution which may be made or prosecuted under this section. None of the railroad personnel herein named shall be authorized to hold said office or exercise its functions unless at the time they are citizens of the United States and have been citizens of this state for at least 1 year preceding their exercising the functions thereof.

History: En. Sec. 3, p. 150, L. 1899; re-en. Sec. 8884, Rev. C. 1907; re-en. Sec. 11570, R.C.M. 1921; re-en. Sec. 11570, R.C.M. 1935; Sec. 94-35-203, R.C.M. 1947; redes. 72-672 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-672; amd. Sec. 54, Ch. 43, L. 1979.

Cross-References

Railroad corporation special peace officers, Title 44, ch. 4, part 9.

69-14-1004. Penalty for intoxication while engaged in train operations. Every person who is intoxicated while in charge of a locomotive engine while as conductor or driver upon any railroad car or train, whether propelled by steam or otherwise, or while acting as train dispatcher or as telegraph operator receiving or transmitting dispatches in relation to the movement of trains is guilty of a misdemeanor.

History: En. Sec. 690, Pen. C. 1895; re-en. Sec. 8521, Rev. C. 1907; re-en. Sec. 11253, R.C.M. 1921; Cal. Pen. C. Sec. 391; re-en. Sec. 11253, R.C.M. 1935; Sec. 94-35-109, R.C.M. 1947; redes. 72-671 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 72-671.

Cross-References

Penalty for misdemeanor, 46-18-212.

69-14-1005. Medical aid for injured trainmen. (1) In case any railroad trainman or employee of any railroad doing business in this state shall be injured during his regular course of employment, any employee of said railroad is hereby empowered and authorized to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat any such injured trainman or employee, during and until such time as one of the regularly employed and paid physicians or surgeons of such railroad corporation is able to render such service.

(2) In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired, as provided in this section, such physician or surgeon shall be compensated and paid a reasonable fee for such services performed by him.

(3) If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for within a reasonable time after such physician or surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 95, L. 1909; amd. Sec. 1, Ch. 45, L. 1921; re-en. Sec. 6602, R.C.M. 1921; re-en. Sec. 6602, R.C.M. 1935; Sec. 72-645, R.C.M. 1947; (2)En. Sec. 2, Ch. 95, L. 1909; re-en. Sec. 6603, R.C.M. 1921; re-en. Sec. 6603, R.C.M. 1935; Sec. 72-646, R.C.M. 1947; (3)En. Sec. 3, Ch. 95, L. 1909; re-en. Sec. 6604, R.C.M. 1921; re-en. Sec. 6604, R.C.M. 1935; Sec. 72-647, R.C.M. 1947; R.C.M. 1947, 72-645, 72-646, 72-647.

Cross-References

Good Samaritan law, 27-1-714.

Consent to emergency treatment, 41-1-405.

69-14-1006. Liability for death or injury to railroad employees. (1) Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee and, if none, then of such employee's parents and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such person or corporation so operating such railroad, in or about the handling, movement, or operation of any train, engine, or car on or over such railroad or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

(2) (a) In all actions brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this section, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation, so operating such railroad, of any statute enacted for the safety of employees contributed to the injury or death of such employee.

(b) An employee of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

(3) Any contract, rule, or device whatsoever, the purpose or intent of which shall be to enable any such person or corporation so operating such railroad to exempt itself from any liability created by this section, shall, to that extent, be void. In any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the

provisions of this section, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action is brought.

History: (1)En. Sec. 1, Ch. 29, L. 1911; re-en. Sec. 6605, R.C.M. 1921; re-en. Sec. 6605, R.C.M. 1935; Sec. 72-648, R.C.M. 1947; (2)(a)En. Sec. 2, Ch. 29, L. 1911; re-en. Sec. 6606, R.C.M. 1921; re-en. Sec. 6606, R.C.M. 1935; Sec. 72-649, R.C.M. 1947; (2)(b)En. Sec. 3, Ch. 29, L. 1911; re-en. Sec. 6607, R.C.M. 1921; re-en. Sec. 6607, R.C.M. 1935; Sec. 72-650, R.C.M. 1947; (3)En. Sec. 4, Ch. 29, L. 1911; re-en. Sec. 6608, R.C.M. 1921; re-en. Sec. 6608, R.C.M. 1935; Sec. 72-651, R.C.M. 1947; R.C.M. 1947, 72-648, 72-649, 72-650, 72-651.

Cross-References

Comparative negligence — extent to which contributory negligence bars recovery, 27-1-702.

Part 11

Sale or Transfer of Railroad Line

69-14-1101. Definitions. As used in this part, the following definitions apply:

(1) "Buyer" means a person, corporation, association, business entity, labor organization, the state of Montana or any of its political subdivisions, or any other entity that acquires a line of railroad, by purchase, lease, or other agreement, to continue the commercial transportation of goods or passengers.

(2) "Labor organization" means any organization or association of any kind in which employees participate and that exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(3) "Seller" means a person, corporation, association, or business entity that transfers a line of railroad by sale, lease, or other agreement.

(4) "Transaction" means the limited purchase, sale, or transfer of part of a line of railroad that will be operated by a common rail carrier.

History: En. Sec. 1, Ch. 653, L. 1987.

69-14-1102. Conditions for transfer of line of railroad. Thirty days prior to filing with the interstate commerce commission of an application to purchase, sell, or transfer any section of a line of railroad, the seller and buyer shall:

(1) file a notice of intent and other information, as described in 69-14-1103, with the attorney general and the commission; and

(2) require representatives to attend meetings, upon reasonable notice, with the attorney general and the commission to respond to questions and requests for information on the proposed transaction directly related to the requirements of 69-14-1103.

History: En. Sec. 2, Ch. 653, L. 1987.

69-14-1103. Notice of intent. (1) The notice of intent filed in accordance with 69-14-1102 must contain:

(a) a complete and accurate description of the identities of the buyer and seller; and

(b) a thorough description of the railroad line to be transferred.

(2) A general description of the terms of the proposed transaction and any labor agreements must be attached to the notice of intent.

History: En. Sec. 3, Ch. 653, L. 1987.

TITLE 70

PROPERTY

Ch.
1. Property in General — Real and Personal.
2. Personal Property — Special Kinds — Quiet Title and Partition.
3. Transfer of Personal Property — Gifts.
4. Accession and Intermixture — Personal Property.
5. Finders.
6. Bailment — Deposit.
7. Loans for Use or Exchange — Personal Property.
8. Rentals of Personal Property.
9. Disposition of Unclaimed Property.

Chapters 10 through 14 reserved.

15. Definitions and Kinds of Estates in Real Property.
16. Rights and Obligations Incidental to Ownership in Real Property.
17. Servitudes, Easements, and Covenants Running With the Land.
18. Real Property — Accession — Fixtures and Watercourses.
19. Real Property Actions Generally — Limitations and Adverse Possession.
20. Transfer of Real Property.
21. Recording Transfers and Other Transactions Relating to Real Property.
22. Corner Recordation Act — Surveys and Coordinates.
23. Unit Ownership Act — Condominiums.
24. Residential Landlord and Tenant Act of 1977.
25. Residential Tenants' Security Deposits.
26. Landlord and Tenant — Residential and Commercial.
27. Forcible Entry and Detainer — Unlawful Detainer.
28. Quieting Title to Real Property.
29. Partition of Real Property.
30. Eminent Domain.
31. Relocation Assistance — Fair Treatment of Condemnees.
32. Homesteads.

Title Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

CHAPTER 1

PROPERTY IN GENERAL REAL AND PERSONAL

Part 1 — General Provisions

70-1-101. Property defined — ownership.
70-1-102. Ownership public or private — state as private proprietor.
70-1-103. Owner entitled to products and accessions.
70-1-104. In what things property interests may exist.
70-1-105. Real or personal.
70-1-106. Real property defined.

70-1-107. Choice of law as to real property.
70-1-108. Personal property defined.
70-1-109. Choice of law as to personal property.
70-1-110. How property acquired.

Part 2 — General Rights of State Over Property

70-1-201. Original and ultimate title.
70-1-202. Property of the state — what included.
70-1-203. Escheat.
70-1-204. Acquisition by taxation.
70-1-205. Eminent domain.

Part 3 — Kinds of Ownership Interests

70-1-301. Interests in real property specially named elsewhere.
70-1-302. Ownership — absolute or qualified.
70-1-303. When ownership absolute.
70-1-304. When ownership qualified.
70-1-305. Ownership by single person.
70-1-306. Ownership by several persons — types.
70-1-307. Joint interest defined.
70-1-308. Safe deposit box — joint tenancy.
70-1-309. Distribution when joint tenant fails to survive by 120 hours.
70-1-310. Action by or against joint tenants or tenants in common.
70-1-311. Abuse of property held jointly or in common — action — mining property.
70-1-312. Partnership interest defined.
70-1-313. Interest in common defined.
70-1-314. Interest in common — how created.
70-1-315. Interest as to time of enjoyment.
70-1-316. Present interest — to what entitles owner.
70-1-317. Future interest — to what entitles owner.
70-1-318. What future interests recognized.
70-1-319. Mere possibility not an interest.
70-1-320. Perpetual interest — duration.
70-1-321. Limited interest — duration.
70-1-322. Kinds of future interests.
70-1-323. Future interest — when vested.
70-1-324. Future interest — when contingent.
70-1-325. Two or more alternative future interests.
70-1-326. Future interests — how passed.

Part 4 — Conditions and Limitations of Ownership

70-1-401. Fixing time of enjoyment — computation — condition.
70-1-402. Kinds of conditions.
70-1-403. Condition precedent requiring wrongful act.
70-1-404. Conditions restraining marriage void.
70-1-405. Conditions restraining alienation void.
70-1-406 through 70-1-418. Repealed.
70-1-419. Future interest not void for improbable contingency.
70-1-420. Future interest limited to class — posthumous children.
70-1-421. Future interest subject to defeat — how — not void.
70-1-422. Future interest contingent on death without children — how defeated.
70-1-423. Future interest not defeated by destruction of other interest.
70-1-424. Future contingent interest — termination of precedent interest.

Part 5 — Transfer of Property
Grants and Their Interpretation

70-1-501. Transfer defined.
70-1-502. Voluntary transfer — applicability of contract rules.
70-1-503. What may be transferred.

70-1-504. Possibility not transferable.
70-1-505. Right of reentry or repossession transferable.
70-1-506. Oral transfer permitted.
70-1-507. Grant defined.
70-1-508. Delivery of grant necessary.
70-1-509. Presumption of delivery.
70-1-510. Delivery to grantee necessarily absolute.
70-1-511. Delivery in escrow.
70-1-512. Constructive delivery.
70-1-513. Grants — how interpreted generally.
70-1-514. Clear limitation not controlled by other words.
70-1-515. Recitals — when resorted to.
70-1-516. Interpretation against grantor — exception.
70-1-517. Irreconcilable provisions.
70-1-518. Meaning of heirs and issue in certain remainders.
70-1-519. Transfer vests title.
70-1-520. Transfer of incidents.
70-1-521. Grant may inure to benefit of stranger.

Part 6 — Rentals—Hiring
(Repealed. Sec. 230, Ch. 410, L. 1991)

Part 7 — Gifts and Devises to Estates

70-1-701. Purpose.
70-1-702. Estate defined.
70-1-703. Conveyances to an estate.
70-1-704. Creation or exercise of a power to appoint to an estate.

Part 8 — Uniform Statutory Rule Against Perpetuities

70-1-801. Short title.
70-1-802. Statutory rule against perpetuities.
70-1-803. When nonvested property interest or power of appointment created.
70-1-804. Reformation.
70-1-805. Exclusions from statutory rule against perpetuities.
70-1-806. Prospective application.
70-1-807. Uniformity of application and construction.

Part 1

General Provisions

70-1-101. Property defined — ownership. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

History: En. Sec. 1070, Civ. C. 1895; re-en. Sec. 4421, Rev. C. 1907; re-en. Sec. 6663, R.C.M. 1921; Cal. Civ. C. Sec. 654; Field Civ. C. Sec. 159; re-en. Sec. 6663, R.C.M. 1935; R.C.M. 1947, 67-201.

Cross-References

Real estate defined, 37-51-102, 37-53-102.

70-1-102. Ownership public or private — state as private proprietor. All property has an owner, whether that owner is the state and the property public or the owner an individual and the property private. The state may also hold property as a private proprietor.

History: En. Sec. 1090, Civ. C. 1895; re-en. Sec. 4431, Rev. C. 1907; re-en. Sec. 6673, R.C.M. 1921; Cal. Civ. C. Sec. 669; Field Civ. C. Sec. 168; re-en. Sec. 6673, R.C.M. 1935; R.C.M. 1947, 67-301.

Cross-References

General rights of state over property, Title 70, ch. 1, part 2.

State Lands, Title 77.

70-1-103. Owner entitled to products and accessions. The owner of a thing also owns all of its products and accessions.

History: En. Sec. 1170, Civ. C. 1895; re-en. Sec. 4472, Rev. C. 1907; re-en. Sec. 6714, R.C.M. 1921; Cal. Civ. C. Sec. 732; Field Civ. C. Sec. 209; re-en. Sec. 6714, R.C.M. 1935; R.C.M. 1947, 67-415.

Cross-References

Seizures of property related to controlled substances, Title 44, ch. 12.

Property — acquired by accession, 70-1-110.

Accession and intermixture of personal property, Title 70, ch. 4.

Increase of thing during period of loan, 70-7-103.

Increase of thing loaned for exchange, 70-7-203.

Income accruing on unclaimed property, 70-9-306.

70-1-104. In what things property interests may exist. There may be ownership of:

(1) all inanimate things which are capable of appropriation or of manual delivery;

(2) all domestic animals;

(3) all obligations;

(4) such products of labor or skill as the composition of an author, the goodwill of a business, trademarks, and signs; and

(5) rights created or granted by statute.

History: En. Sec. 1071, Civ. C. 1895; re-en. Sec. 4422, Rev. C. 1907; re-en. Sec. 6664, R.C.M. 1921; Cal. Civ. C. Sec. 655; Field Civ. C. Sec. 160; re-en. Sec. 6664, R.C.M. 1935; R.C.M. 1947, 67-202.

Cross-References

Seizures of property related to controlled substances, Title 44, ch. 12.

Prohibition of possession of wild animals — exceptions, 50-23-102.

70-1-105. Real or personal. Property is either:

(1) real or immovable; or

(2) personal or movable.

History: En. Sec. 1073, Civ. C. 1895; re-en. Sec. 4424, Rev. C. 1907; re-en. Sec. 6666, R.C.M. 1921; Cal. Civ. C. Sec. 657; Field Civ. C. Sec. 162; re-en. Sec. 6666, R.C.M. 1935; R.C.M. 1947, 67-206.

70-1-106. Real property defined. Real or immovable property consists of:

(1) land;

(2) that which is affixed to land;

(3) that which is incidental or appurtenant to land;
(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.

70-1-107. Choice of law as to real property. Real property within this state is governed by the law of this state, except where the title is in the United States.

History: En. Sec. 1200, Civ. C. 1895; re-en. Sec. 4480, Rev. C. 1907; re-en. Sec. 6722, R.C.M. 1921; Cal. Civ. C. Sec. 755; re-en. Sec. 6722, R.C.M. 1935; R.C.M. 1947, 67-501.

70-1-108. Personal property defined. Every kind of property that is not real is personal.

History: En. Sec. 1079, Civ. C. 1895; re-en. Sec. 4430, Rev. C. 1907; re-en. Sec. 6672, R.C.M. 1921; Cal. Civ. C. Sec. 663; Field Civ. C. Sec. 167; re-en. Sec. 6672, R.C.M. 1935; R.C.M. 1947, 67-212.

70-1-109. Choice of law as to personal property. If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

History: En. Sec. 1340, Civ. C. 1895; re-en. Sec. 4556, Rev. C. 1907; re-en. Sec. 6803, R.C.M. 1921; Cal. Civ. C. Sec. 946; Field Civ. C. Sec. 364; re-en. Sec. 6803, R.C.M. 1935; R.C.M. 1947, 67-1101.

70-1-110. How property acquired. Property is acquired by:
(1) occupancy;
(2) accession;
(3) transfer;
(4) will; or
(5) succession.

History: En. Sec. 1380, Civ. C. 1895; re-en. Sec. 4569, Rev. C. 1907; re-en. Sec. 6816, R.C.M. 1921; Cal. Civ. C. Sec. 1000; re-en. Sec. 6816, R.C.M. 1935; R.C.M. 1947, 67-1201.

Cross-References

Uniform Probate Code — intestate succession and wills, Title 72, ch. 2.

Part 2

General Rights of State Over Property

70-1-201. Original and ultimate title. The original and ultimate right of all property, real and personal, within the jurisdiction of this state and not belonging to the United States is in the people of the state.

History: En. Sec. 60, Pol. C. 1895; re-en. Sec. 26, Rev. C. 1907; re-en. Sec. 27, R.C.M. 1921; Cal. Pol. C. Sec. 40; re-en. Sec. 27, R.C.M. 1935; R.C.M. 1947, 67-101.

70-1-202. Property of the state — what included. The state is the owner of:

(1) all land below the water of a navigable lake or stream;
(2) all property lawfully appropriated by it to its own use;
(3) all property dedicated or granted to the state; and
(4) all property of which there is no other owner.

History: En. Sec. 1091, Civ. C. 1895; re-en. Sec. 4432, Rev. C. 1907; re-en. Sec. 6674, R.C.M. 1921; Cal. Civ. C. Sec. 670; Based on Field Civ. C. Sec. 169; re-en. Sec. 6674, R.C.M. 1935; R.C.M. 1947, 67-302.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Public land trust, disposition, Art. X, sec. 11, Mont. Const.

State Lands, Title 77.

Ownership records of state-owned land, Title 77, ch. 1, part 7.

70-1-203. Escheat. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. All property within the limits of this state which does not belong to any person belongs to the state.

History: En. Sec. 61, Pol. C. 1895; re-en. Sec. 27, Rev. C. 1907; re-en. Sec. 28, R.C.M. 1921; Cal. Pol. C. Sec. 41; re-en. Sec. 28, R.C.M. 1935; R.C.M. 1947, 67-102.

Cross-References

Disposition of unclaimed funds from liquidated bank, 32-1-537.

Escheated estates, Title 72, ch. 14.

70-1-204. Acquisition by taxation. The state or any county thereof may acquire property by taxation in the modes authorized by law.

History: En. Sec. 62, Pol. C. 1895; re-en. Sec. 28, Rev. C. 1907; re-en. Sec. 29, R.C.M. 1921; Cal. Pol. C. Sec. 43; re-en. Sec. 29, R.C.M. 1935; R.C.M. 1947, 67-103.

Cross-References

Tax sales, Title 15, ch. 17.

70-1-205. Eminent domain. The state may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the modes provided in chapter 30 of this title.

History: En. Sec. 63, Pol. C. 1895; re-en. Sec. 29, Rev. C. 1907; re-en. Sec. 30, R.C.M. 1921; Cal. Pol. C. Sec. 44; re-en. Sec. 30, R.C.M. 1935; R.C.M. 1947, 67-104.

Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

Part 3

Kinds of Ownership Interests

70-1-301. Interests in real property specially named elsewhere. In respect to real or immovable property, the interests mentioned in this part are denominated estates and are specially named and classified in 70-15-202 through 70-17-111 and in Title 72, chapter 34, part 3.

History: **En. Sec. 1122, Civ. C. 1895; re-en. Sec. 4455, Rev. C. 1907; re-en. Sec. 6697, R.C.M. 1921; Cal. Civ. C. Sec. 701; Field Civ. C. Sec. 193; re-en. Sec. 6697, R.C.M. 1935; R.C.M. 1947, 67-327.**

70-1-302. Ownership — absolute or qualified. The ownership of property is either:

(1) absolute; or

(2) qualified.

History: **En. Sec. 1100, Civ. C. 1895; re-en. Sec. 4433, Rev. C. 1907; re-en. Sec. 6675, R.C.M. 1921; Cal. Civ. C. Sec. 678; Field Civ. C. Sec. 171; re-en. Sec. 6675, R.C.M. 1935; R.C.M. 1947, 67-303.**

70-1-303. When ownership absolute. The ownership of property is absolute when a single person has the absolute dominion over it and may use it or dispose of it according to his pleasure, subject only to general laws.

History: **En. Sec. 1101, Civ. C. 1895; re-en. Sec. 4434, Rev. C. 1907; re-en. Sec. 6676, R.C.M. 1921; Cal. Civ. C. Sec. 679; Field Civ. C. Sec. 172; re-en. Sec. 6676, R.C.M. 1935; R.C.M. 1947, 67-304.**

70-1-304. When ownership qualified. The ownership of property is qualified when:

(1) it is shared with one or more persons;

(2) the time of enjoyment is deferred or limited;

(3) the use is restricted.

History: **En. Sec. 1102, Civ. C. 1895; re-en. Sec. 4435, Rev. C. 1907; re-en. Sec. 6677, R.C.M. 1921; Cal. Civ. C. Sec. 680; Field Civ. C. Sec. 173; re-en. Sec. 6677, R.C.M. 1935; R.C.M. 1947, 67-305.**

70-1-305. Ownership by single person. The ownership of property by a single person is designated as a sole or several ownership.

History: **En. Sec. 1103, Civ. C. 1895; re-en. Sec. 4436, Rev. C. 1907; re-en. Sec. 6678, R.C.M. 1921; Cal. Civ. C. Sec. 681; Field Civ. C. Sec. 174; re-en. Sec. 6678, R.C.M. 1935; R.C.M. 1947, 67-306.**

70-1-306. Ownership by several persons — types. The ownership of property by several persons is either of:

(1) joint interests;

(2) partnership interests;

(3) interests in common.

History: **En. Sec. 1104, Civ. C. 1895; re-en. Sec. 4437, Rev. C. 1907; re-en. Sec. 6679, R.C.M. 1921; Cal. Civ. C. Sec. 682; Field Civ. C. Sec. 175; re-en. Sec. 6679, R.C.M. 1935; R.C.M. 1947, 67-307.**

Cross-References

Husband and wife, Title 40, ch. 2.

Husband and wife as joint tenants, 40-2-105.

Joint tenancy — how created, 70-20-105.

Conveyance in joint tenancy — right of survivorship, 70-20-310.

Partition of real property, Title 70, ch. 29.

70-1-307. Joint interest defined. A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy or when granted or devised to executors or trustees as joint tenants.

History: **En. Sec. 1105, Civ. C. 1895; re-en. Sec. 4438, Rev. C. 1907; re-en. Sec. 6680, R.C.M. 1921; Cal. Civ. C. Sec. 683; Based on Field Civ. C. Sec. 176; re-en. Sec. 6680, R.C.M. 1935; R.C.M. 1947, 67-308.**

Cross-References
Husband and wife as joint tenants, 40-2-105.
Action for waste — treble damages, 70-16-106.
Dower and curtesy abolished, 72-2-701.

70-1-308. Safe deposit box — joint tenancy. When so specified in the agreement granting for a term of time the right in two or more persons to use or occupy any safe or box, commonly referred to as a safe deposit vault or box for the safekeeping of valuables, such interest and estate created in the grantees shall be a joint tenancy in such vault or box and pass to the survivors and survivor upon the death of one or more of the joint tenants with right in such survivors and survivor to have access to and possession of such vault or box and the contents thereof under the terms of the agreement.

History: En. Sec. 1, Ch. 62, L. 1939; R.C.M. 1947, 67-309.

Cross-References
Joint deposits — survivorship, 32-1-442.
Building and loan associations, 32-2-416.
Credit unions — joint accounts, 32-3-505.

70-1-309. Distribution when joint tenant fails to survive by 120 hours. (1) Whenever property is held in joint tenancy by two joint tenants and the joint tenants die within 120 hours of each other or it cannot be determined whether one survived the other by 120 hours, the property shall be distributed one-half to the estate of one joint tenant and one-half to the estate of the other joint tenant.

(2) Whenever property is held in joint tenancy by more than two joint tenants and the last surviving joint tenant does not survive all of the other joint tenants by 120 hours or it cannot be determined whether he so survived for 120 hours, the property shall be distributed equally among the estates of the last surviving joint tenant and the joint tenants which he failed to survive by 120 hours.

History: En. 67-308.1 by Sec. 1, Ch. 75, L. 1977; R.C.M. 1947, 67-308.1.

Cross-References
Requirement that devisee survive testator by 120 hours, 72-2-511.

70-1-310. Action by or against joint tenants or tenants in common. All persons holding as tenants in common, joint tenants, or any number less than all may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party. In all cases one tenant in common or joint tenant can sue his cotenant.

History: En. Sec. 21, p. 43, L. 1877; re-en. Sec. 21, 1st Div. Rev. Stat. 1879; re-en. Sec. 21, 1st Div. Comp. Stat. 1887; amd. Sec. 586, C. Civ. Proc. 1895; re-en. Sec. 6493, Rev. C. 1907; re-en. Sec. 9085, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 384; re-en. Sec. 9085, R.C.M. 1935; R.C.M. 1947, 93-2823.

70-1-311. Abuse of property held jointly or in common — action — mining property. If any person shall assume and exercise exclusive ownership over or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy or tenancy in common, the party aggrieved shall have his action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist; provided that nothing herein contained shall prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together less than all from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the same in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of such mining operations, if any made, and all liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing herein shall prevent or preclude the cotenant or joint tenant, not joining in the operation of such mining property, from receiving his, its, or their proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the same.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.

Cross-References

Abuse of property held jointly or in common — action — mining property, 70-19-202.

70-1-312. Partnership interest defined. A partnership interest is one owned by several persons in partnership for partnership purposes.

History: En. Sec. 1106, Civ. C. 1895; re-en. Sec. 4439, Rev. C. 1907; re-en. Sec. 6681, R.C.M. 1921; Cal. Civ. C. Sec. 684; Field Civ. C. Sec. 177; re-en. Sec. 6681, R.C.M. 1935; R.C.M. 1947, 67-311.

Cross-References

Partnerships, Title 35, ch. 10 through 12.

Nature of a partner's right in specific partnership property, 35-10-502.

70-1-313. Interest in common defined. An interest in common is one owned by several persons, not in joint ownership or partnership.

History: En. Sec. 1107, Civ. C. 1895; re-en. Sec. 4440, Rev. C. 1907; re-en. Sec. 6682, R.C.M. 1921; Cal. Civ. C. Sec. 685; Field Civ. C. Sec. 178; re-en. Sec. 6682, R.C.M. 1935; R.C.M. 1947, 67-312.

Cross-References

Action by or against tenants in common, 70-1-310.

Action for waste — treble damages, 70-16-106.

Abuse of property held jointly or in common — action — mining property, 70-19-202.

70-1-314. Interest in common — how created. Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common unless acquired by them in partnership for partnership purposes or unless declared in its creation to be a joint interest, as provided in 70-1-307.

History: En. Sec. 1108, Civ. C. 1895; re-en. Sec. 4441, Rev. C. 1907; re-en. Sec. 6683, R.C.M. 1921; Cal. Civ. C. Sec. 686; Based on Field Civ. C. Sec. 179; re-en. Sec. 6683, R.C.M. 1935; R.C.M. 1947, 67-313.

Cross-References

Husband and wife as tenants in common, 40-2-105.

Husband and wife — when interests separate, 40-2-201.

Dower and curtesy abolished, 72-2-701.

70-1-315. Interest as to time of enjoyment. In respect to the time of enjoyment, an interest in property is either:

(1) present or future; and

(2) perpetual or limited.

History: En. Sec. 1109, Civ. C. 1895; re-en. Sec. 4442, Rev. C. 1907; re-en. Sec. 6684, R.C.M. 1921; Cal. Civ. C. Sec. 688; Field Civ. C. Sec. 180; re-en. Sec. 6684, R.C.M. 1935; R.C.M. 1947, 67-314.

70-1-316. Present interest — to what entitles owner. A present interest entitles the owner to the immediate possession of the property.

History: En. Sec. 1110, Civ. C. 1895; re-en. Sec. 4443, Rev. C. 1907; re-en. Sec. 6685, R.C.M. 1921; Cal. Civ. C. Sec. 689; Field Civ. C. Sec. 181; re-en. Sec. 6685, R.C.M. 1935; R.C.M. 1947, 67-315.

70-1-317. Future interest — to what entitles owner. A future interest entitles the owner to the possession of the property only at a future period.

History: En. Sec. 1111, Civ. C. 1895; re-en. Sec. 4444, Rev. C. 1907; re-en. Sec. 6686, R.C.M. 1921; Cal. Civ. C. Sec. 690; Field Civ. C. Sec. 182; re-en. Sec. 6686, R.C.M. 1935; R.C.M. 1947, 67-316.

Cross-References

Future estate — right of possession at future day, 70-15-209.

70-1-318. What future interests recognized. No future interest in property is recognized by the law, except such as is defined in this code.

History: En. Sec. 1124, Civ. C. 1895; re-en. Sec. 4457, Rev. C. 1907; re-en. Sec. 6699, R.C.M. 1921; Cal. Civ. C. Sec. 703; Field Civ. C. Sec. 195; re-en. Sec. 6699, R.C.M. 1935; R.C.M. 1947, 67-329.

70-1-319. Mere possibility not an interest. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

History: En. Sec. 1121, Civ. C. 1895; re-en. Sec. 4454, Rev. C. 1907; re-en. Sec. 6696, R.C.M. 1921; Cal. Civ. C. Sec. 700; Field Civ. C. Sec. 192; re-en. Sec. 6696, R.C.M. 1935; R.C.M. 1947, 67-326.

70-1-320. Perpetual interest — duration. A perpetual interest has a duration equal to that of the property.

History: En. Sec. 1112, Civ. C. 1895; re-en. Sec. 4445, Rev. C. 1907; re-en. Sec. 6687, R.C.M. 1921; Cal. Civ. C. Sec. 691; Field Civ. C. Sec. 183; re-en. Sec. 6687, R.C.M. 1935; R.C.M. 1947, 67-317.

70-1-321. Limited interest — duration. A limited interest has a duration of less than that of the property.

History: En. Sec. 1113, Civ. C. 1895; re-en. Sec. 4446, Rev. C. 1907; re-en. Sec. 6688, R.C.M. 1921; Cal. Civ. C. Sec. 692; Field Civ. C. Sec. 184; re-en. Sec. 6688, R.C.M. 1935; R.C.M. 1947, 67-318.

70-1-322. Kinds of future interests. A future interest is either:

(1) vested; or

(2) contingent.

History: En. Sec. 1114, Civ. C. 1895; re-en. Sec. 4447, Rev. C. 1907; re-en. Sec. 6689, R.C.M. 1921; Cal. Civ. C. Sec. 693; Field Civ. C. Sec. 185; re-en. Sec. 6689, R.C.M. 1935; R.C.M. 1947, 67-319.

70-1-323. Future interest — when vested. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest.

History: En. Sec. 1115, Civ. C. 1895; re-en. Sec. 4448, Rev. C. 1907; re-en. Sec. 6690, R.C.M. 1921; Cal. Civ. C. Sec. 694; Field Civ. C. Sec. 186; re-en. Sec. 6690, R.C.M. 1935; R.C.M. 1947, 67-320.

70-1-324. Future interest — when contingent. A future interest is contingent whilst the person in whom or the event upon which it is limited to take effect remains uncertain.

History: En. Sec. 1116, Civ. C. 1895; re-en. Sec. 4449, Rev. C. 1907; re-en. Sec. 6691, R.C.M. 1921; Cal. Civ. C. Sec. 695; Field Civ. C. Sec. 187; re-en. Sec. 6691, R.C.M. 1935; R.C.M. 1947, 67-321.

70-1-325. Two or more alternative future interests. Two or more future interests may be created to take effect in the alternative so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly.

History: En. Sec. 1117, Civ. C. 1895; re-en. Sec. 4450, Rev. C. 1907; re-en. Sec. 6692, R.C.M. 1921; Cal. Civ. C. Sec. 696; Field Civ. C. Sec. 188; re-en. Sec. 6692, R.C.M. 1935; R.C.M. 1947, 67-322.

70-1-326. Future interests — how passed. Future interests pass by succession, will, and transfer in the same manner as present interests.

History: En. Sec. 1120, Civ. C. 1895; re-en. Sec. 4453, Rev. C. 1907; re-en. Sec. 6695, R.C.M. 1921; Cal. Civ. C. Sec. 699; Field Civ. C. Sec. 191; re-en. Sec. 6695, R.C.M. 1935; R.C.M. 1947, 67-325.

Part 4

Conditions and Limitations of Ownership

Part Cross-References

Trust code, Title 72, ch. 33 through 36.

70-1-401. Fixing time of enjoyment — computation — condition. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on event. In the latter case, the enjoyment is said to be upon condition.

History: En. Sec. 1140, Civ. C. 1895; re-en. Sec. 4458, Rev. C. 1907; re-en. Sec. 6700, R.C.M. 1921; Cal. Civ. C. Sec. 707; Field Civ. C. Sec. 196; re-en. Sec. 6700, R.C.M. 1935; R.C.M. 1947, 67-401.

70-1-402. Kinds of conditions. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

History: En. Sec. 1141, Civ. C. 1895; re-en. Sec. 4459, Rev. C. 1907; re-en. Sec. 6701, R.C.M. 1921; Cal. Civ. C. Sec. 708; Field Civ. C. Sec. 197; re-en. Sec. 6701, R.C.M. 1935; R.C.M. 1947, 67-402.

Cross-References

Types of conditions — defined, 28-1-402 through 28-1-405.

70-1-403. Condition precedent requiring wrongful act. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

History: En. Sec. 1142, Civ. C. 1895; re-en. Sec. 4460, Rev. C. 1907; re-en. Sec. 6702, R.C.M. 1921; Cal. Civ. C. Sec. 709; Field Civ. C. Sec. 198; re-en. Sec. 6702, R.C.M. 1935; R.C.M. 1947, 67-403.

Cross-References

When contract wholly void, 28-2-603.

When contract partially void, 28-2-604.

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

70-1-404. Conditions restraining marriage void. Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void, but this does not affect limitations where the intent was not to forbid marriage but only to give the use until marriage.

History: En. Sec. 1143, Civ. C. 1895; re-en. Sec. 4461, Rev. C. 1907; re-en. Sec. 6703, R.C.M. 1921; Cal. Civ. C. Sec. 710; Based on Field Civ. C. Sec. 199; re-en. Sec. 6703, R.C.M. 1935; R.C.M. 1947, 67-404.

Cross-References

Contracts in restraint of marriage generally void, 28-2-706.

70-1-405. Conditions restraining alienation void. Conditions restraining alienation, when repugnant to the interest created, are void.

History: En. Sec. 1144, Civ. C. 1895; re-en. Sec. 4462, Rev. C. 1907; re-en. Sec. 6704, R.C.M. 1921; Cal. Civ. C. Sec. 711; Field Civ. C. Sec. 200; re-en. Sec. 6704, R.C.M. 1935; R.C.M. 1947, 67-405.

70-1-406 through 70-1-418. Repealed. Sec. 8, Ch. 250, L. 1989.

Compiler's Comments

Histories of Repealed Sections:

70-1-406. En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(a).

70-1-407. En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).

70-1-408. En. Sec. 1150, Civ. C. 1895; re-en. Sec. 4463, Rev. C. 1907; re-en. Sec. 6705, R.C.M. 1921; Cal. Civ. C. Sec. 715; Based on Field Civ. C. Sec. 201; re-en. Sec. 6705, R.C.M. 1935; amd. Sec. 1, Ch. 213, L. 1959; R.C.M. 1947, 67-406(b); amd. Sec. 1, Ch. 338, L. 1979.

70-1-409. En. Sec. 1151, Civ. C. 1895; re-en. Sec. 4464, Rev. C. 1907; re-en. Sec. 6706, R.C.M. 1921; Cal. Civ. C. Sec. 716; Field Civ. C. Sec. 202; re-en. Sec. 6706, R.C.M. 1935; amd. Sec. 2, Ch. 213, L. 1959; R.C.M. 1947, 67-407(part).

70-1-410. En. Sec. 1220, Civ. C. 1895; re-en. Sec. 4491, Rev. C. 1907; re-en. Sec. 6733, R.C.M. 1921; Cal. Civ. C. Sec. 771; Field Civ. C. Sec. 228; re-en. Sec. 6733, R.C.M. 1935; R.C.M. 1947, 67-512.

70-1-411. En. Secs. 1, 2, Ch. 214, L. 1959; R.C.M. 1947, 67-423, 67-424.

70-1-412. En. Sec. 1190, Civ. C. 1895; re-en. Sec. 4478, Rev. C. 1907; re-en. Sec. 6720, R.C.M. 1921; Cal. Civ. C. Sec. 748; Field Civ. C. Sec. 215; re-en. Sec. 6720, R.C.M. 1935; R.C.M. 1947, 67-421.

70-1-413. En. Sec. 1160, Civ. C. 1895; re-en. Sec. 4467, Rev. C. 1907; re-en. Sec. 6709, R.C.M. 1921; Cal. Civ. C. Sec. 722; Field Civ.

C. Sec. 204; re-en. Sec. 6709, R.C.M. 1935; R.C.M. 1947, 67-410.

70-1-414. En. Sec. 1161, Civ. C. 1895; re-en. Sec. 4468, Rev. C. 1907; re-en. Sec. 6710, R.C.M. 1921; Cal. Civ. C. Sec. 723; Field Civ. C. Sec. 205; re-en. Sec. 6710, R.C.M. 1935; R.C.M. 1947, 67-411.

70-1-415. En. Sec. 1162, Civ. C. 1895; re-en. Sec. 4469, Rev. C. 1907; re-en. Sec. 6711, R.C.M. 1921; Cal. Civ. C. Sec. 724; Field Civ. C. Sec. 206; re-en. Sec. 6711, R.C.M. 1935; amd. Sec. 1, Ch. 212, L. 1939; R.C.M. 1947, 67-412.

70-1-416. En. Sec. 1163, Civ. C. 1895; re-en. Sec. 4470, Rev. C. 1907; re-en. Sec. 6712, R.C.M. 1921; Cal. Civ. C. Sec. 725; Field Civ. C. Sec. 207; re-en. Sec. 6712, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1957; R.C.M. 1947, 67-413.

70-1-417. En. Sec. 1164, Civ. C. 1895; re-en. Sec. 4471, Rev. C. 1907; re-en. Sec. 6713, R.C.M. 1921; Cal. Civ. C. Sec. 726; Field Civ. C. Sec. 208; re-en. Sec. 6713, R.C.M. 1935; amd. Sec. 2, Ch. 212, L. 1939; R.C.M. 1947, 67-414.

70-1-418. En. Sec. 1171, Civ. C. 1895; re-en. Sec. 4473, Rev. C. 1907; re-en. Sec. 6715, R.C.M. 1921; Cal. Civ. C. Sec. 733; Field Civ. C. Sec. 210; re-en. Sec. 6715, R.C.M. 1935; R.C.M. 1947, 67-416.

70-1-419. Future interest not void for improbable contingency. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

History: En. Sec. 1118, Civ. C. 1895; re-en. Sec. 4451, Rev. C. 1907; re-en. Sec. 6693, R.C.M. 1921; Cal. Civ. C. Sec. 697; Field Civ. C. Sec. 189; re-en. Sec. 6693, R.C.M. 1935; R.C.M. 1947, 67-323.

70-1-420. Future interest limited to class — posthumous children. When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

History: En. Sec. 1119, Civ. C. 1895; re-en. Sec. 4452, Rev. C. 1907; re-en. Sec. 6694, R.C.M. 1921; Cal. Civ. C. Sec. 698; Field Civ. C. Sec. 190; re-en. Sec. 6694, R.C.M. 1935; R.C.M. 1947, 67-324.

Cross-References

Pretermitted child, 72-2-602.

Devise to a class — who included, 72-11-320.

70-1-421. Future interest subject to defeat — how — not void. A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof, nor is the future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

History: En. Sec. 1181, Civ. C. 1895; re-en. Sec. 4475, Rev. C. 1907; re-en. Sec. 6717, R.C.M. 1921; Cal. Civ. C. Sec. 740; Field Civ. C. Sec. 212; re-en. Sec. 6717, R.C.M. 1935; R.C.M. 1947, 67-418.

70-1-422. Future interest contingent on death without children — how defeated. A future interest depending on the contingency of the death of any person without successors, heirs, issue, or children is defeated by the birth of a posthumous child of such person, capable of taking by succession.

History: En. Sec. 45, p. 486, Bannack Stat.; re-en. Sec. 45, p. 403, Cod. Stat. 1871; re-en. Sec. 222, 5th Div. Rev. Stat. 1879; re-en. Sec. 280, 5th Div. Comp. Stat. 1887; amd. Sec. 1180, Civ. C. 1895; re-en. Sec. 4474, Rev. C. 1907; re-en. Sec. 6716, R.C.M. 1921; Cal. Civ. C. Sec. 739; Field Civ. C. Sec. 211; re-en. Sec. 6716, R.C.M. 1935; R.C.M. 1947, 67-417.

70-1-423. Future interest not defeated by destruction of other interest. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest or by destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by 70-1-424 or where a forfeiture is imposed by statute as a penalty for the violation thereof.

History: En. Sec. 1182, Civ. C. 1895; re-en. Sec. 4476, Rev. C. 1907; re-en. Sec. 6718, R.C.M. 1921; Cal. Civ. C. Sec. 741; Field Civ. C. Sec. 213; re-en. Sec. 6718, R.C.M. 1935; R.C.M. 1947, 67-419.

70-1-424. Future contingent interest — termination of precedent interest. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect, but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

History: En. Sec. 1183, Civ. C. 1895; re-en. Sec. 4477, Rev. C. 1907; re-en. Sec. 6719, R.C.M. 1921; Cal. Civ. C. Sec. 742; Field Civ. C. Sec. 214; re-en. Sec. 6719, R.C.M. 1935; R.C.M. 1947, 67-420.

Part 5

Transfer of Property
Grants and Their Interpretation

Part Cross-References

Transfer of real property, Title 70, ch. 20.

Small Tract Financing Act of Montana — trust indentures, Title 71, ch. 1, part 3.

70-1-501. Transfer defined. Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another.

History: En. Sec. 1430, Civ. C. 1895; re-en. Sec. 4588, Rev. C. 1907; re-en. Sec. 6835, R.C.M. 1921; Cal. Civ. C. Sec. 1039; Field Civ. C. Sec. 458; re-en. Sec. 6835, R.C.M. 1935; R.C.M. 1947, 67-1501.

70-1-502. Voluntary transfer — applicability of contract rules. A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity.

History: En. Sec. 1431, Civ. C. 1895; re-en. Sec. 4589, Rev. C. 1907; re-en. Sec. 6836, R.C.M. 1921; Cal. Civ. C. Sec. 1040; Field Civ. C. Sec. 459; re-en. Sec. 6836, R.C.M. 1935; R.C.M. 1947, 67-1502.

Cross-References

Contracts — obligations in general, Title 28, ch. 1.

70-1-503. What may be transferred. Property of any kind may be transferred, except as otherwise provided by this part.

History: En. Sec. 1440, Civ. C. 1895; re-en. Sec. 4590, Rev. C. 1907; re-en. Sec. 6837, R.C.M. 1921; Cal. Civ. C. Sec. 1044; Field Civ. C. Sec. 460; re-en. Sec. 6837, R.C.M. 1935; R.C.M. 1947, 67-1503.

70-1-504. Possibility not transferable. A mere possibility not coupled with an interest cannot be transferred.

History: En. Sec. 1441, Civ. C. 1895; re-en. Sec. 4591, Rev. C. 1907; re-en. Sec. 6838, R.C.M. 1921; Cal. Civ. C. Sec. 1045; Field Civ. C. Sec. 461; re-en. Sec. 6838, R.C.M. 1935; R.C.M. 1947, 67-1504.

70-1-505. Right of reentry or repossession transferable. A right of reentry or of repossession for breach of condition subsequent can be transferred.

History: En. Sec. 1442, Civ. C. 1895; re-en. Sec. 4592, Rev. C. 1907; re-en. Sec. 6839, R.C.M. 1921; Cal. Civ. C. Sec. 1046; Based on Field Civ. C. Sec. 462; re-en. Sec. 6839, R.C.M. 1935; R.C.M. 1947, 67-1505.

70-1-506. Oral transfer permitted. A transfer may be made without writing in every case in which a writing is not expressly required by statute.

History: En. Sec. 1450, Civ. C. 1895; re-en. Sec. 4594, Rev. C. 1907; re-en. Sec. 6841, R.C.M. 1921; Cal. Civ. C. Sec. 1052; Field Civ. C. Sec. 463; re-en. Sec. 6841, R.C.M. 1935; R.C.M. 1947, 67-1507.

70-1-507. Grant defined. A transfer in writing is called a grant or conveyance or bill of sale. The term "grant", in this part, includes all these instruments unless it is specially applied to real property.

History: En. Sec. 1451, Civ. C. 1895; re-en. Sec. 4595, Rev. C. 1907; re-en. Sec. 6842, R.C.M. 1921; Cal. Civ. C. Sec. 1053; re-en. Sec. 6842, R.C.M. 1935; R.C.M. 1947, 67-1508.

70-1-508. Delivery of grant necessary. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

History: En. Sec. 1452, Civ. C. 1895; re-en. Sec. 4596, Rev. C. 1907; re-en. Sec. 6843, R.C.M. 1921; Cal. Civ. C. Sec. 1054; Field Civ. C. Sec. 465; re-en. Sec. 6843, R.C.M. 1935; R.C.M. 1947, 67-1509.

70-1-509. Presumption of delivery. A grant duly executed is presumed to have been delivered at its date.

History: En. Sec. 1453, Civ. C. 1895; re-en. Sec. 4597, Rev. C. 1907; re-en. Sec. 6844, R.C.M. 1921; Cal. Civ. C. Sec. 1055; Field Civ. C. Sec. 466; re-en. Sec. 6844, R.C.M. 1935; R.C.M. 1947, 67-1510.

70-1-510. Delivery to grantee necessarily absolute. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery is made.

History: En. Sec. 1454, Civ. C. 1895; re-en. Sec. 4598, Rev. C. 1907; re-en. Sec. 6845, R.C.M. 1921; Cal. Civ. C. Sec. 1056; Field Civ. C. Sec. 467; re-en. Sec. 6845, R.C.M. 1935; R.C.M. 1947, 67-1511.

70-1-511. Delivery in escrow. A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and on delivery by the depositary, it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

History: En. Sec. 1455, Civ. C. 1895; re-en. Sec. 4599, Rev. C. 1907; re-en. Sec. 6846, R.C.M. 1921; Cal. Civ. C. Sec. 1057; Based on Field Civ. C. Sec. 468; re-en. Sec. 6846, R.C.M. 1935; R.C.M. 1947, 67-1512.

70-1-512. Constructive delivery. Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

(1) where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered and under such circumstances that the grantee is entitled to immediate delivery; or

(2) where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

History: En. Sec. 1457, Civ. C. 1895; re-en. Sec. 4601, Rev. C. 1907; re-en. Sec. 6848, R.C.M. 1921; Cal. Civ. C. Sec. 1059; Field Civ. C. Sec. 470; re-en. Sec. 6848, R.C.M. 1935; R.C.M. 1947, 67-1514.

70-1-513. Grants — how interpreted generally. Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this part.

History: En. Sec. 1470, Civ. C. 1895; re-en. Sec. 4602, Rev. C. 1907; re-en. Sec. 6849, R.C.M. 1921; Cal. Civ. C. Sec. 1066; Field Civ. C. Sec. 472; re-en. Sec. 6849, R.C.M. 1935; R.C.M. 1947, 67-1515.

Cross-References

Interpretation of contracts, Title 28, ch. 3.

70-1-514. Clear limitation not controlled by other words. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

History: En. Sec. 1471, Civ. C. 1895; re-en. Sec. 4603, Rev. C. 1907; re-en. Sec. 6850, R.C.M. 1921; Cal. Civ. C. Sec. 1067; Field Civ. C. Sec. 473; re-en. Sec. 6850, R.C.M. 1935; R.C.M. 1947, 67-1516.

70-1-515. Recitals — when resorted to. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

History: En. Sec. 1472, Civ. C. 1895; re-en. Sec. 4604, Rev. C. 1907; re-en. Sec. 6851, R.C.M. 1921; Cal. Civ. C. Sec. 1068; Field Civ. C. Sec. 474; re-en. Sec. 6851, R.C.M. 1935; R.C.M. 1947, 67-1517.

Cross-References

What contracts must be in writing, 28-2-903.

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

70-1-516. Interpretation against grantor — exception. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

History: En. Sec. 1473, Civ. C. 1895; re-en. Sec. 4605, Rev. C. 1907; re-en. Sec. 6852, R.C.M. 1921; Cal. Civ. C. Sec. 1069; Field Civ. C. Sec. 475; re-en. Sec. 6852, R.C.M. 1935; R.C.M. 1947, 67-1518.

70-1-517. Irreconcilable provisions. If several parts of a grant are absolutely irreconcilable, the former part prevails.

History: En. Sec. 1474, Civ. C. 1895; re-en. Sec. 4606, Rev. C. 1907; re-en. Sec. 6853, R.C.M. 1921; Cal. Civ. C. Sec. 1070; Field Civ. C. Sec. 476; re-en. Sec. 6853, R.C.M. 1935; R.C.M. 1947, 67-1519.

70-1-518. Meaning of heirs and issue in certain remainders. Where a future interest is limited by a grant to take effect on the death of any person without heirs or heirs of his body or without issue or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

History: En. Sec. 44, p. 486, Bannack Stat.; re-en. Sec. 44, p. 403, Cod. Stat. 1871; re-en. Sec. 221, 5th Div. Rev. Stat. 1879; re-en. Sec. 279, 5th Div. Comp. Stat. 1887; amd. Sec. 1475, Civ. C. 1895; re-en. Sec. 4607, Rev. C. 1907; re-en. Sec. 6854, R.C.M. 1921; Cal. Civ. C. Sec. 1071; Field Civ. C. Sec. 477; re-en. Sec. 6854, R.C.M. 1935; R.C.M. 1947, 67-1520.

Cross-References

Future interest contingent on death without children — how defeated, 70-1-422.

Share of heirs other than surviving spouse, 72-2-203.

70-1-519. Transfer vests title. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied.

History: En. Sec. 1490, Civ. C. 1895; re-en. Sec. 4609, Rev. C. 1907; re-en. Sec. 6856, R.C.M. 1921; Cal. Civ. C. Sec. 1083; Based on Field Civ. C. Sec. 479; re-en. Sec. 6856, R.C.M. 1935; R.C.M. 1947, 67-1522.

70-1-520. Transfer of incidents. The transfer of a thing transfers also all its incidents unless expressly excepted, but the transfer of an incident to a thing does not transfer the thing itself.

History: En. Sec. 1491, Civ. C. 1895; re-en. Sec. 4610, Rev. C. 1907; re-en. Sec. 6857, R.C.M. 1921; Cal. Civ. C. Sec. 1084; Field Civ. C. Sec. 481; re-en. Sec. 6857, R.C.M. 1935; R.C.M. 1947, 67-1523.

70-1-521. Grant may inure to benefit of stranger. A present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party thereto.

History: En. Sec. 1492, Civ. C. 1895; re-en. Sec. 4611, Rev. C. 1907; re-en. Sec. 6858, R.C.M. 1921; Cal. Civ. C. Sec. 1805; Field Civ. C. Sec. 482; re-en. Sec. 6858, R.C.M. 1935; R.C.M. 1947, 67-1524.

Part 6

Rentals — Hiring
(Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

70-1-601. En. Sec. 2600, Civ. C. 1895; re-en. Sec. 5215, Rev. C. 1907; re-en. Sec. 7730, R.C.M. 1921; Cal. Civ. C. Sec. 1925; Field Civ. C. Sec. 979; re-en. Sec. 7730, R.C.M. 1935; R.C.M. 1947, 42-101.

70-1-602. En. Sec. 2602, Civ. C. 1895; re-en. Sec. 5217, Rev. C. 1907; re-en. Sec. 7732, R.C.M. 1921; Cal. Civ. C. Sec. 1927; Field Civ. C. Sec. 981; re-en. Sec. 7732, R.C.M. 1935; R.C.M. 1947, 42-103.

70-1-603. En. Sec. 2601, Civ. C. 1895; re-en. Sec. 5216, Rev. C. 1907; re-en. Sec. 7731, R.C.M. 1921; Cal. Civ. C. Sec. 1926; Field Civ. C. Sec. 980; re-en. Sec. 7731, R.C.M. 1935; R.C.M. 1947, 42-102.

70-1-604. En. Sec. 2603, Civ. C. 1895; re-en. Sec. 5218, Rev. C. 1907; re-en. Sec. 7733, R.C.M. 1921; Cal. Civ. C. Sec. 1928; Field Civ. C. Sec. 982; re-en. Sec. 7733, R.C.M. 1935; R.C.M. 1947, 42-104.

70-1-605. En. Sec. 2604, Civ. C. 1895; re-en. Sec. 5219, Rev. C. 1907; re-en. Sec. 7734, R.C.M. 1921; Cal. Civ. C. Sec. 1929; Field Civ. C. Sec. 983; re-en. Sec. 7734, R.C.M. 1935; R.C.M. 1947, 42-105.

70-1-606. En. Sec. 2605, Civ. C. 1895; re-en. Sec. 5220, Rev. C. 1907; re-en. Sec. 7735, R.C.M. 1921; Cal. Civ. C. Sec. 1930; Field Civ. C. Sec. 984; re-en. Sec. 7735, R.C.M. 1935; R.C.M. 1947, 42-106.

70-1-607. En. Sec. 2608, Civ. C. 1895; re-en. Sec. 5223, Rev. C. 1907; re-en. Sec. 7738, R.C.M. 1921; Cal. Civ. C. Sec. 1933; Field Civ. C. Sec. 987; re-en. Sec. 7738, R.C.M. 1935; R.C.M. 1947, 42-109.

70-1-608. En. Sec. 2609, Civ. C. 1895; re-en. Sec. 5224, Rev. C. 1907; re-en. Sec. 7739, R.C.M. 1921; Cal. Civ. C. Sec. 1934; Field Civ. C. Sec. 988; re-en. Sec. 7739, R.C.M. 1935; R.C.M. 1947, 42-110.

70-1-609. En. Sec. 2606, Civ. C. 1895; re-en. Sec. 5221, Rev. C. 1907; re-en. Sec. 7736, R.C.M. 1921; Cal. Civ. C. Sec. 1931; Field Civ. C. Sec. 985; re-en. Sec. 7736, R.C.M. 1935; R.C.M. 1947, 42-107.

70-1-610. En. Sec. 2607, Civ. C. 1895; re-en. Sec. 5222, Rev. C. 1907; re-en. Sec. 7737, R.C.M. 1921; Cal. Civ. C. Sec. 1932; Field Civ. C. Sec. 986; re-en. Sec. 7737, R.C.M. 1935; R.C.M. 1947, 42-108.

70-1-611. En. Sec. 2610, Civ. C. 1895; re-en. Sec. 5225, Rev. C. 1907; re-en. Sec. 7740, R.C.M. 1921; Cal. Civ. C. Sec. 1935; Field Civ. C. Sec. 989; re-en. Sec. 7740, R.C.M. 1935; R.C.M. 1947, 42-111.

Part 7

Gifts and Devises to Estates

70-1-701. Purpose. It is the purpose of this part to declare that a gift or devise may be made to the estate of a named or otherwise designated person and that a power to appoint to the estate of such a person may be created and exercised in order to ensure that persons who make inter vivos or testamentary conveyances that are subject to the law of Montana can effectively use forms of conveyances that are commonly used in other states to qualify for the federal estate and gift tax marital deductions.

History: En. Sec. 1, Ch. 376, L. 1979.

70-1-702. Estate defined. The word "estate" as used in this part means persons who may take interests in property.

History: En. Sec. 4, Ch. 376, L. 1979.

70-1-703. Conveyances to an estate. Unless a contrary intention appears, a devise, as defined in 72-1-103(8), or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in his will, or may be used to satisfy claims for debts or taxes.

History: En. Sec. 2, Ch. 376, L. 1979.

70-1-704. Creation or exercise of a power to appoint to an estate. A person may be given a power to appoint a legal or equitable interest in property to his own estate by will or deed. The donee of such a power is considered to have a general power of appointment exercisable in favor of any person. Permissible exercise of the power as created may include but is not limited to:

(1) direction to the personal representative of the donee to administer the interest as if it were an interest in the property of the donee;

(2) direction to the personal representative to use the interest to satisfy the donee's devises or claims for debts and taxes; or

(3) appointment of the interest to any person to whom the donee might give or devise his own property.

History: En. Sec. 3, Ch. 376, L. 1979.

Part 8

Uniform Statutory Rule Against Perpetuities

70-1-801. Short title. This part may be cited as the "Uniform Statutory Rule Against Perpetuities".

History: En. Sec. 1, Ch. 250, L. 1989.

70-1-802. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, a clause in a governing instrument purports to postpone the vesting or termination of any interest or trust until, purports to disallow the vesting or termination of any interest or trust beyond, purports to require all interests or trusts to vest or terminate no later than, or operates in any similar fashion upon the later of:

(a) the expiration of a period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement; or

(b) the death of, or the expiration of a period not exceeding 21 years after the death of, the survivor of specified lives in being at the creation of the trust or other property arrangement, then the portion of the clause pertaining to the period of time that exceeds 21 years or that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement must be disregarded, and the clause operates upon the death of, or upon the expiration of the period not exceeding 21 years after the death of, the survivor of the specified lives in being at the creation of the trust or other property arrangement.

History: En. Sec. 2, Ch. 250, L. 1989; amd. Sec. 1, Ch. 26, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (5) specifying that a clause pertaining to a period of time that exceeds 21 years or that might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or property arrangement must be disregarded.

70-1-803. When nonvested property interest or power of appointment created. (1) Except as provided in 70-1-805 and subsections (2) and (3) of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this part, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in 70-1-802(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this part, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: En. Sec. 3, Ch. 250, L. 1989.

70-1-804. Reformation. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the 90 years allowed by 70-1-802(1)(b), (2)(b), or (3)(b) if:

(1) a nonvested property interest or a power of appointment becomes invalid under 70-1-802;

(2) a class gift is not but might become invalid under 70-1-802 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by 70-1-802(1)(a) can vest but not within 90 years after its creation.

History: En. Sec. 4, Ch. 250, L. 1989.

70-1-805. Exclusions from statutory rule against perpetuities. Section 70-1-802 does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

(a) premarital or postmarital agreement;

(b) separation or divorce settlement;

(c) spouse's election;

(d) similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) contract to make or not to revoke a will or trust;

(f) contract to exercise or not to exercise a power of appointment;

(g) transfer in satisfaction of a duty of support; or

(h) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) the power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees or independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

History: En. Sec. 5, Ch. 250, L. 1989.

70-1-806. Prospective application. (1) Except as extended by subsection (2), this part applies to a nonvested property interest or a power of appointment created on or after October 1, 1989. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before October 1, 1989, and is determined in a judicial proceeding commenced on or after October 1, 1989, to violate this state's rule against perpetuities as that rule existed before October 1, 1989, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely

approximates the transferor's manifested plan of distribution and that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: En. Sec. 6, Ch. 250, L. 1989.

70-1-807. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 7, Ch. 250, L. 1989.

CHAPTER 2

PERSONAL PROPERTY — SPECIAL KINDS QUIET TITLE AND PARTITION

Part 1 — Special Kinds

70-2-101. Thing in action defined.
70-2-102. Transfer and succession.
70-2-103 through 70-2-110 reserved.
70-2-111. Wild animals.
70-2-112. Repealed.
70-2-113. Repealed.

Part 2 — Quiet Title and Partition

70-2-201. Action for quieting title to personal property.
70-2-202. General procedural provisions applicable.
70-2-203 through 70-2-210 reserved.
70-2-211. Partition of personal property.
70-2-212. Real property partition provisions applicable.

Part 1

Special Kinds

70-2-101. Thing in action defined. A thing in action is a right to recover money or other personal property by a judicial proceeding.

History: En. Sec. 1350, Civ. C. 1895; re-en. Sec. 4557, Rev. C. 1907; re-en. Sec. 6804, R.C.M. 1921; Cal. Civ. C. Sec. 953; Based on Field Civ. C. Sec. 366; re-en. Sec. 6804, R.C.M. 1935; R.C.M. 1947, 67-1102.

Cross-References

Actions and special proceedings defined, 27-1-102.

70-2-102. Transfer and succession. A thing in action arising out of the violation of a right of property or out of an obligation may be transferred by the owner. Upon the death of the owner, it passes to his personal representatives except where in the cases provided in this code it passes to his devisees or successor in office.

History: En. Sec. 1351, Civ. C. 1895; re-en. Sec. 4558, Rev. C. 1907; re-en. Sec. 6805, R.C.M. 1921; Cal. Civ. C. Sec. 954; Field Civ. C. Sec. 367; re-en. Sec. 6805, R.C.M. 1935; R.C.M. 1947, 67-1103.

70-2-103 through 70-2-110 reserved.

70-2-111. Wild animals. Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

History: En. Sec. 1072, Civ. C. 1895; re-en. Sec. 4423, Rev. C. 1907; re-en. Sec. 6665, R.C.M. 1921; Cal. Civ. C. Sec. 656; Field Civ. C. Sec. 161; re-en. Sec. 6665, R.C.M. 1935; R.C.M. 1947, 67-203.

Cross-References

Prohibition of possession of wild animals, 50-23-102.

Fish and wildlife — fishing, hunting, and trapping licenses, Title 87, ch. 2.

Fish and wildlife — restrictions and regulations, Title 87, ch. 3.

Menageries and zoos, Title 87, ch. 4, part 8.

Unlawful capture of furbearer for use on fur farm, 87-4-1014.

70-2-112. Repealed. Sec. 2, Ch. 355, L. 1987.

History: En. Sec. 1, Ch. 97, L. 1933; re-en. Sec. 6665.1, R.C.M. 1935; R.C.M. 1947, 67-204.

70-2-113. Repealed. Sec. 2, Ch. 355, L. 1987.

History: En. Sec. 2, Ch. 97, L. 1933; re-en. Sec. 6665.2, R.C.M. 1935; amd. Sec. 196, Ch. 310, L. 1974; amd. Sec. 2, Ch. 10, L. 1977; R.C.M. 1947, 67-205; amd. Sec. 1, Ch. 277, L. 1983.

Part 2

Quiet Title and Partition

70-2-201. Action for quieting title to personal property. Any person claiming title to personal property, whether in actual possession thereof or not, may bring an action in the district court of any county wherein such personal property or any part thereof is situated against any person or persons claiming any interest therein by reason of alleged ownership, lien, or otherwise and by a decree of such court may have established and determined finally the rights of all claimants to such personal property.

History: **En. Sec. 1, Ch. 51, L. 1935; re-en. Sec. 9478.1, R.C.M. 1935; R.C.M. 1947, 93-6201.**

70-2-202. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4, 12(a), and 41(e), M.R.Civ.P., are applicable to the action for which provision is made in 70-2-201.

History: **En. Sec. 2, Ch. 51, L. 1935; re-en. Sec. 9478.2, R.C.M. 1935; R.C.M. 1947, 93-6202; amd. Sec. 1, Ch. 115, L. 1979.**

70-2-203 through 70-2-210 reserved.

70-2-211. Partition of personal property. (1) When any personal property is owned by two or more persons, any one or more thereof may bring an action, according to the respective rights of the persons interested therein, for the partition of such property or for a sale of the same or any part thereof if it appears that a partition cannot be made without great prejudice to the owners.

(2) Such action shall be brought in the county wherein said property or any part thereof is situated.

History: **En. Sec. 1, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.1.**

70-2-212. Real property partition provisions applicable. The provisions contained in chapter 29 of this title, which prescribe the manner in which real property may be sold, are hereby made applicable to the action which is authorized by 70-2-211.

History: **En. Sec. 2, Ch. 143, L. 1959; R.C.M. 1947, 93-6301.2.**

CHAPTER 3

TRANSFER OF PERSONAL PROPERTY — GIFTS

Part 1 — General Provisions

70-3-101. Gift defined.
70-3-102. Gift — how made.
70-3-103. Gift not revocable.
70-3-104. Unsolicited goods considered gift.

Part 2 — Gifts in View of Death

70-3-201. Gift in view of death defined.
70-3-202. When gift presumed to be in view of death.
70-3-203. Revocation.
70-3-204. Effect of will upon gift.
70-3-205. When gift treated as legacy.

Part 1

General Provisions

70-3-101. Gift defined. A gift is a transfer of personal property made voluntarily and without consideration.

History: En. Sec. 1550, Civ. C. 1895; re-en. Sec. 4635, Rev. C. 1907; re-en. Sec. 6882, R.C.M. 1921; Cal. Civ. C. Sec. 1146; Field Civ. C. Sec. 500; re-en. Sec. 6882, R.C.M. 1935; R.C.M. 1947, 67-1706.

Cross-References

Uniform Transfers to Minors Act, Title 72, ch. 26.

70-3-102. Gift — how made. A verbal gift is not valid unless the means of obtaining possession and control of the thing are given or, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

History: En. Sec. 1551, Civ. C. 1895; re-en. Sec. 4636, Rev. C. 1907; re-en. Sec. 6883, R.C.M. 1921; Cal. Civ. C. Sec. 1147; Field Civ. C. Sec. 501; re-en. Sec. 6883, R.C.M. 1935; R.C.M. 1947, 67-1707.

70-3-103. Gift not revocable. A gift, other than a gift in view of death, cannot be revoked by the giver.

History: En. Sec. 1552, Civ. C. 1895; re-en. Sec. 4637, Rev. C. 1907; re-en. Sec. 6884, R.C.M. 1921; Cal. Civ. C. Sec. 1148; Field Civ. C. Sec. 502; re-en. Sec. 6884, R.C.M. 1935; R.C.M. 1947, 67-1708.

70-3-104. Unsolicited goods considered gift. Unless otherwise agreed, where unsolicited goods are delivered to a person, he may refuse delivery of the goods, or if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to or intended for the recipient, they shall be deemed a gift, and the recipient may use or dispose of them in any manner without obligation to the sender.

History: En. Sec. 1, Ch. 210, L. 1967; R.C.M. 1947, 67-1706.1.

Part 2

Gifts in View of Death

70-3-201. Gift in view of death defined. A gift in view of death is one which is made in contemplation, fear, or peril of death and with intent that it shall take effect only in case of the death of the giver.

History: En. Sec. 1553, Civ. C. 1895; re-en. Sec. 4638, Rev. C. 1907; re-en. Sec. 6885, R.C.M. 1921; Cal. Civ. C. Sec. 1149; Field Civ. C. Sec. 503; re-en. Sec. 6885, R.C.M. 1935; R.C.M. 1947, 67-1709.

70-3-202. When gift presumed to be in view of death. A gift made during the last illness of the giver or under circumstances which would impress him with an expectation of speedy death is presumed to be a gift in view of death.

History: En. Sec. 1554, Civ. C. 1895; re-en. Sec. 4639, Rev. C. 1907; re-en. Sec. 6886, R.C.M. 1921; Cal. Civ. C. Sec. 1150; Field Civ. C. Sec. 504; re-en. Sec. 6886, R.C.M. 1935; R.C.M. 1947, 67-1710.

70-3-203. Revocation. A gift in view of death may be revoked by the giver at any time and is revoked by his recovery from the illness or escape from the peril under the presence of which it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time.

History: En. Sec. 1555, Civ. C. 1895; re-en. Sec. 4640, Rev. C. 1907; re-en. Sec. 6887, R.C.M. 1921; Cal. Civ. C. Sec. 1151; Field Civ. C. Sec. 505; re-en. Sec. 6887, R.C.M. 1935; R.C.M. 1947, 67-1711.

70-3-204. Effect of will upon gift. A gift in view of death is not affected by a previous will or by a subsequent will unless it expresses intention to revoke the gift.

History: En. Sec. 1556, Civ. C. 1895; re-en. Sec. 4641, Rev. C. 1907; re-en. Sec. 6888, R.C.M. 1921; Cal. Civ. C. Sec. 1152; Field Civ. C. Sec. 506; re-en. Sec. 6888, R.C.M. 1935; R.C.M. 1947, 67-1712.

Cross-References

Wills — execution, addendums, and revocation, Title 72, ch. 2, part 3.

Wills — construction and operation, Title 72, ch. 11, part 3.

70-3-205. When gift treated as legacy. A gift in view of death must be treated as a legacy so far as relates to the creditors of the giver.

History: En. Sec. 1557, Civ. C. 1895; re-en. Sec. 4642, Rev. C. 1907; re-en. Sec. 6889, R.C.M. 1921; Cal. Civ. C. Sec. 1153; Field Civ. C. Sec. 507; re-en. Sec. 6889, R.C.M. 1935; R.C.M. 1947, 67-1713.

CHAPTER 4

ACCESSION AND INTERMIXTURE PERSONAL PROPERTY

Part 1 — General Provisions

70-4-101. Uniform Commercial Code — applicability.
70-4-102. Uniting several things — to whom whole belongs.
70-4-103. Rules for determination of principal part.

Part 2 — Uniting of Materials—Workmanship

70-4-201. Use of materials belonging to another — reimbursement.
70-4-202. Uniting of materials of maker and other.
70-4-203. Uniting of materials of several owners.
70-4-204. Use of materials without consent — owner prevails.
70-4-205. Owner of materials wrongfully used — election of remedies.
70-4-206. Wrongdoer liable in damages.

Part 1

General Provisions

70-4-101. Uniform Commercial Code — applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963; R.C.M. 1947, 67-1410.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

70-4-102. Uniting several things — to whom whole belongs. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner or surrender the whole to him.

History: En. Sec. 1410, Civ. C. 1895; re-en. Sec. 4579, Rev. C. 1907; re-en. Sec. 6826, R.C.M. 1921; Cal. Civ. C. Sec. 1025; Field Civ. C. Sec. 449; re-en. Sec. 6826, R.C.M. 1935; R.C.M. 1947, 67-1401.

Cross-References

Priority when goods are commingled or processed, 30-9-315.

70-4-103. Rules for determination of principal part. (1) That part is deemed to be the principal to which the other has been united only for the use, ornament, or completion of the former unless the latter is the more valuable and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him although some injury should result to the thing to which it has been united.

(2) If neither part can be considered the principal within the rule prescribed by subsection (1), the more valuable or, if the values are nearly equal, the most considerable in bulk is to be deemed the principal part.

History: En. Secs. 1411, 1412, Civ. C. 1895; re-en. Secs. 4580, 4581, Rev. C. 1907; re-en. Secs. 6827, 6828, R.C.M. 1921; Cal. Civ. C. Secs. 1026, 1027; Field Civ. C. Secs. 450, 451; re-en. Secs. 6827, 6828, R.C.M. 1935; R.C.M. 1947, 67-1402, 67-1403.

Part 2

Uniting of Materials — Workmanship

70-4-201. Use of materials belonging to another — reimbursement. If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker on reimbursing the value of the materials.

History: En. Sec. 1413, Civ. C. 1895; re-en. Sec. 4582, Rev. C. 1907; re-en. Sec. 6829, R.C.M. 1921; Cal. Civ. C. Sec. 1028; Field Civ. C. Sec. 452; re-en. Sec. 6829, R.C.M. 1935; R.C.M. 1947, 67-1404.

70-4-202. Uniting of materials of maker and other. Where one has made use of materials which in part belong to him and in part to another in order to form a thing of a new description, without having destroyed any of the materials but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him and, as respects the other, of the materials belonging to him and the price of his workmanship.

History: En. Sec. 1414, Civ. C. 1895; re-en. Sec. 4583, Rev. C. 1907; re-en. Sec. 6830, R.C.M. 1921; Cal. Civ. C. Sec. 1029; Field Civ. C. Sec. 453; re-en. Sec. 6830, R.C.M. 1935; R.C.M. 1947, 67-1405.

70-4-203. Uniting of materials of several owners. When a thing has been formed by the admixture of several materials of different owners and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials, but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

History: En. Sec. 1415, Civ. C. 1895; re-en. Sec. 4584, Rev. C. 1907; re-en. Sec. 6831, R.C.M. 1921; Cal. Civ. C. Sec. 1030; Field Civ. C. Sec. 454; re-en. Sec. 6831, R.C.M. 1935; R.C.M. 1947, 67-1406.

70-4-204. Use of materials without consent — owner prevails. The foregoing sections of this chapter are not applicable to cases in which one willfully uses the materials of another without his consent, but in such cases, the product belongs to the owner of material if its identity can be traced.

History: En. Sec. 1416, Civ. C. 1895; re-en. Sec. 4585, Rev. C. 1907; re-en. Sec. 6832, R.C.M. 1921; Cal. Civ. C. Sec. 1031; Field Civ. C. Sec. 455; re-en. Sec. 6832, R.C.M. 1935; R.C.M. 1947, 67-1407.

70-4-205. Owner of materials wrongfully used — election of remedies. In all cases where one whose material has been used without his knowledge in order to form a product of a different description can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof or, where he is entitled to the product, the value thereof in place of the product.

History: En. Sec. 1417, Civ. C. 1895; re-en. Sec. 4586, Rev. C. 1907; re-en. Sec. 6833, R.C.M. 1921; Cal. Civ. C. Sec. 1032; Field Civ. C. Sec. 456; re-en. Sec. 6833, R.C.M. 1935; R.C.M. 1947, 67-1408.

70-4-206. Wrongdoer liable in damages. One who wrongfully employs materials belonging to another is liable to him in damages as well as under the foregoing provisions of this chapter.

History: **En. Sec. 1418, Civ. C. 1895; re-en. Sec. 4587, Rev. C. 1907; re-en. Sec. 6834, R.C.M. 1921; Cal. Civ. C. Sec. 1033; Field Civ. C. Sec. 457; re-en. Sec. 6834, R.C.M. 1935; R.C.M. 1947, 67-1409.**

Cross-References

Damages, Title 27, ch. 1, parts 2 and 3.

CHAPTER 5

FINDERS

Part 1 — Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned.
70-5-102. Finder not bound to take charge — status as depositary.
70-5-103. Duty to inform owner when known.
70-5-104. Right of finder to require proof of claimant's ownership.
70-5-105. Compensation of finder.
70-5-106. Exoneration of finder by storage of thing found.
70-5-107. Exoneration of owner by surrender of thing to finder.

Part 2 — Procedure

70-5-201. When finder may sell thing found.
70-5-202. How sale conducted.
70-5-203. Finder to make affidavit when owner not known.
70-5-204. Justice to appoint appraisers — duty of appraisers.
70-5-205. Recording and posting of valuation and description.
70-5-206. When property vests in finder — publication.
70-5-207. When finder to restore property.
70-5-208. Proof — how made.
70-5-209. Finder failing to make discovery — double recovery.

Chapter Cross-References

Performance to one of several creditors, 28-1-1103.

Part 1

Rights and Duties of Finders Generally

70-5-101. Nonapplicability to things abandoned. The provisions of this chapter have no application to things which have been intentionally abandoned by their owners.

History: **En. Sec. 2528, Civ. C. 1895; re-en. Sec. 5186, Rev. C. 1907; re-en. Sec. 7693, R.C.M. 1921; Cal. Civ. C. Sec. 1872; Field Civ. C. Sec. 946; re-en. Sec. 7693, R.C.M. 1935; R.C.M. 1947, 20-409.**

70-5-102. Finder not bound to take charge — status as depositary. One who finds a thing lost is not bound to take charge of it, but if he does so, he is thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire.

History: En. Sec. 2520, Civ. C. 1895; re-en. Sec. 5178, Rev. C. 1907; re-en. Sec. 7685, R.C.M. 1921; Cal. Civ. C. Sec. 1864; Field Civ. C. Sec. 938; re-en. Sec. 7685, R.C.M. 1935; R.C.M. 1947, 20-401.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Bailment — deposit, Title 70, ch. 6.

70-5-103. Duty to inform owner when known. If any person finds any money, goods, things in action, or other personal property or saves any domestic animal from drowning or starvation when the property is of a value of $10 or more and he knows or suspects who the owner is, he must use reasonable diligence to inform the owner thereof and make restitution without compensation, further than a reasonable charge for saving and taking care thereof. If he fails to do so, he is liable in damages to the owner and has no claim to any reward offered by the owner for the recovery of the thing or to any compensation for his trouble or expenses.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part); amd. Sec. 2, Ch. 115, L. 1979.

70-5-104. Right of finder to require proof of claimant's ownership. The finder of a thing may in good faith before giving it up require reasonable proof of ownership from any person claiming it.

History: En. Sec. 2522, Civ. C. 1895; re-en. Sec. 5180, Rev. C. 1907; re-en. Sec. 7687, R.C.M. 1921; Cal. Civ. C. Sec. 1866; Field Civ. C. Sec. 940; re-en. Sec. 7687, R.C.M. 1935; R.C.M. 1947, 20-403.

70-5-105. Compensation of finder. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation and for any other service necessarily performed by him about it and to a reasonable reward for keeping it.

History: En. Sec. 2523, Civ. C. 1895; re-en. Sec. 5181, Rev. C. 1907; re-en. Sec. 7688, R.C.M. 1921; Cal. Civ. Sec. 1867; Field. Civ. C. Sec. 941; re-en. Sec. 7688, R.C.M. 1935; R.C.M. 1947, 20-404.

70-5-106. Exoneration of finder by storage of thing found. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character at a reasonable expense.

History: En. Sec. 2524, Civ. C. 1895; re-en. Sec. 5182, Rev. C. 1907; re-en. Sec. 7689, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field Civ. C. Sec. 942; re-en. Sec. 7689, R.C.M. 1935; R.C.M. 1947, 20-405.

70-5-107. Exoneration of owner by surrender of thing to finder. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

History: En. Sec. 2527, Civ. C. 1895; re-en. Sec. 5185, Rev. C. 1907; re-en. Sec. 7692, R.C.M. 1921; Cal. Civ. C. Sec. 1868; Field. Civ. C. Sec. 945; re-en. Sec. 7692, R.C.M. 1935; R.C.M. 1947, 20-408.

Part 2

Procedure

70-5-201. When finder may sell thing found. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found or being found refuses upon demand to pay the lawful charges of the finder, in the following cases:

(1) when the thing is in danger of perishing or of losing the greater part of its value; or

(2) when the lawful charges of the finder amount to two-thirds of its value.

History: En. Sec. 2525, Civ. C. 1895; re-en. Sec. 5183, Rev. C. 1907; re-en. Sec. 7690, R.C.M. 1921; Cal. Civ. C. Sec. 1869; Field Civ. C. Sec. 943; re-en. Sec. 7690, R.C.M. 1935; R.C.M. 1947, 20-406.

70-5-202. How sale conducted. A sale under the provisions of 70-5-201 must be made in the same manner as the sale of a thing pledged.

History: En. Sec. 2526, Civ. C. 1895; re-en. Sec. 5184, Rev. C. 1907; re-en. Sec. 7691, R.C.M. 1921; Cal. Civ. C. Sec. 1870; Field Civ. C. Sec. 944; re-en. Sec. 7691, R.C.M. 1935; R.C.M. 1947, 20-407.

70-5-203. Finder to make affidavit when owner not known. If the owner is not known to the party saving or finding such property, he must, within 5 days, make an affidavit before some justice of the peace of the county stating when and where he found or saved such property, particularly describing it and, if the property was saved, particularly from what and how he saved the same, stating therein whether the owner of the property is known to him and that he has not secreted, withheld, or disposed of any part of such property.

History: En. Sec. 2900, Pol. C. 1895; re-en. Sec. 1996, Rev. C. 1907; re-en. Sec. 7694, R.C.M. 1921; Cal. Pol. C. Sec. 3136; re-en. Sec. 7694, R.C.M. 1935; R.C.M. 1947, 20-410(part).

70-5-204. Justice to appoint appraisers — duty of appraisers. The justice must then summon three disinterested householders to appraise the same. The appraisers or any two of them must make two lists of the valuation and description of such property and sign and make oath to the same and deliver one of the lists to the finder and the other to the justice of the peace.

History: En. Sec. 2901, Pol. C. 1895; re-en. Sec. 1997, Rev. C. 1907; re-en. Sec. 7695, R.C.M. 1921; Cal. Pol. C. Sec. 3137; re-en. Sec. 7695, R.C.M. 1935; R.C.M. 1947, 20-411.

70-5-205. Recording and posting of valuation and description. The justice must file such list, and the finder must transmit a copy of the same to the county clerk and recorder, who must record the same in a book known as the "Estray and Lost Property Book" within 15 days, and the finder must at once set up at the courthouse door and four other public places in the township or city a copy of such valuation and a description of property.

History: En. Sec. 2902, Pol. C. 1895; re-en. Sec. 1998, Rev. C. 1907; re-en. Sec. 7696, R.C.M. 1921; Cal. Pol. C. Sec. 3138; re-en. Sec. 7696, R.C.M. 1935; R.C.M. 1947, 20-412.

70-5-206. When property vests in finder — publication. If no owner appears and proves the property within 6 months and the value thereof does not exceed $20, the same vests in the finder; but if the value exceeds $20, the finder must, within 30 days after setting up the list mentioned in 70-5-205, cause a copy of the description to be inserted in some newspaper printed in the county if there be one and if not, in some newspaper printed in the state for 3 weeks. If no owner prove the property within 1 year after such publication, it vests in the finder.

History: En. Sec. 2903, Pol. C. 1895; re-en. Sec. 1999, Rev. C. 1907; re-en. Sec. 7697, R.C.M. 1921; Cal. Pol. C. Sec. 3139; re-en. Sec. 7697, R.C.M. 1935; R.C.M. 1947, 20-413.

70-5-207. When finder to restore property. If within 1 year an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such property or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any court having jurisdiction.

History: En. Sec. 2904, Pol. C. 1895; re-en. Sec. 2000, Rev. C. 1907; re-en. Sec. 7698, R.C.M. 1921; Cal. Pol. C. Sec. 3140; re-en. Sec. 7698, R.C.M. 1935; R.C.M. 1947, 20-414.

70-5-208. Proof — how made. The proof required by this chapter must be made before the county clerk and recorder with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be is the owner, he must certify that fact under his hand and seal.

History: En. Sec. 2906, Pol. C. 1895; re-en. Sec. 2002, Rev. C. 1907; re-en. Sec. 7700, R.C.M. 1921; Cal. Pol. C. Sec. 3142; re-en. Sec. 7700, R.C.M. 1935; R.C.M. 1947, 20-416.

70-5-209. Finder failing to make discovery — double recovery. If any person find any money, property, or other valuable thing and fail to make discovery of the same as required by this chapter, he forfeits to the owner double the value thereof.

History: En. Sec. 2905, Pol. C. 1895; re-en. Sec. 2001, Rev. C. 1907; re-en. Sec. 7699, R.C.M. 1921; Cal. Pol. C. Sec. 3141; re-en. Sec. 7699, R.C.M. 1935; R.C.M. 1947, 20-415.

CHAPTER 6

BAILMENT — DEPOSIT

Part 1 — Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary.
70-6-102. Voluntary deposit — how made.
70-6-103. Involuntary deposit — how made.
70-6-104. Involuntary depositary bound to take charge.

70-6-105. Involuntary deposit as gratuitous.
70-6-106. Deposit for keeping defined.
70-6-107. Deposit for exchange defined.
70-6-108. Deposit for exchange — title passes.

Part 2 — Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited.
70-6-202. Liability for damage from wrongful use.
70-6-203. Loss or injury of thing deposited.
70-6-204. Extent of depositary's liability for negligence.
70-6-205. Sale of thing in danger of perishing.
70-6-206. Duty of depositary of animals.
70-6-207. Service rendered by depositary.
70-6-208. Notice to owner of adverse claim.
70-6-209. Notice to true owner of thing wrongfully detained.
70-6-210. Depositor to indemnify depositary — damage — expenses.
70-6-211. Depositary to deliver on demand.
70-6-212. No duty to deliver without demand.
70-6-213. Place of delivery.
70-6-214. Delivery of thing owned jointly.

Part 3 — Gratuitous Deposits

70-6-301. Gratuitous deposit defined.
70-6-302. Degree of care required of gratuitous depositary.
70-6-303. When duties of gratuitous depositary cease.

Part 4 — Deposit for Hire—Storage

70-6-401. Applicability — Uniform Commercial Code.
70-6-402. Deposit for hire defined.
70-6-403. Degree of care required of depositary for hire.
70-6-404. Rate of compensation for fraction of week or half month.
70-6-405. Termination of deposit.
70-6-406 through 70-6-410 reserved.
70-6-411. Sale to pay costs of storage.
70-6-412. Application of proceeds of sale.
70-6-413 through 70-6-419 reserved.
70-6-420. Default in payment of storage space rental fees — notice — sale of contents.

Part 5 — Innkeepers

70-6-501. Innkeeper's liability as to property of guests — dollar limitation.
70-6-502. No liability without negligence.
70-6-503. Loss or damage by fire — liability for negligence.
70-6-504. How exempted from liability — safe.
70-6-505. Storage of property in outbuilding — nonliability.

Chapter Cross-References

Performance to one of several joint creditors, 28-1-1103.

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Part 1

Nature and Classification of Deposits

70-6-101. Deposit — voluntary or involuntary. A deposit may be:

(1) voluntary or involuntary; and

(2) for safekeeping or for exchange.

History: En. Sec. 2440, Civ. C. 1895; re-en. Sec. 5133, Rev. C. 1907; re-en. Sec. 7636, R.C.M. 1921; Cal. Civ. C. Sec. 1813; Field Civ. C. Sec. 907; re-en. Sec. 7636, R.C.M. 1935; R.C.M. 1947, 20-101.

Cross-References

When a seller must act as a depositary, 30-11-201.

70-6-102. Voluntary deposit — how made. A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary.

History: En. Sec. 2441, Civ. C. 1895; re-en. Sec. 5134, Rev. C. 1907; re-en. Sec. 7637, R.C.M. 1921; Cal. Civ. C. Sec. 1814; Field Civ. C. Sec. 908; re-en. Sec. 7637, R.C.M. 1935; R.C.M. 1947, 20-102.

70-6-103. Involuntary deposit — how made. An involuntary deposit is made:

(1) by the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner; or

(2) in cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it out of necessity to the care of any person.

History: En. Sec. 2442, Civ. C. 1895; re-en. Sec. 5135, Rev. C. 1907; re-en. Sec. 7638, R.C.M. 1921; Cal. Civ. C. Sec. 1815; Field Civ. C. Sec. 909; re-en. Sec. 7638, R.C.M. 1935; R.C.M. 1947, 20-103.

70-6-104. Involuntary depositary bound to take charge. The person with whom a thing is deposited in the manner described in 70-6-103 is bound to take charge of it if able to do so.

History: En. Sec. 2443, Civ. C. 1895; re-en. Sec. 5136, Rev. C. 1907; re-en. Sec. 7639, R.C.M. 1921; Cal. Civ. C. Sec. 1816; Field Civ. C. Sec. 910; re-en. Sec. 7639, R.C.M. 1935; R.C.M. 1947, 20-104.

70-6-105. Involuntary deposit as gratuitous. An involuntary deposit is gratuitous, the depositary being entitled to no reward.

History: En. Sec. 2481, Civ. C. 1895; re-en. Sec. 5154, Rev. C. 1907; re-en. Sec. 7657, R.C.M. 1921; Cal. Civ. C. Sec. 1845; Field Civ. C. Sec. 928; re-en. Sec. 7657, R.C.M. 1935; R.C.M. 1947, 20-210.

70-6-106. Deposit for keeping defined. A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

History: En. Sec. 2444, Civ. C. 1895; re-en. Sec. 5137, Rev. C. 1907; re-en. Sec. 7640, R.C.M. 1921; Cal. Civ. C. Sec. 1817; Field Civ. C. Sec. 911; re-en. Sec. 7640, R.C.M. 1935; R.C.M. 1947, 20-105.

70-6-107. Deposit for exchange defined. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

History: En. Sec. 2445, Civ. C. 1895; re-en. Sec. 5138, Rev. C. 1907; re-en. Sec. 7641, R.C.M. 1921; Cal. Civ. C. Sec. 1818; Field Civ. C. Sec. 912; re-en. Sec. 7641, R.C.M. 1935; R.C.M. 1947, 20-106.

70-6-108. Deposit for exchange — title passes. A deposit for exchange transfers to the depositary the title to the thing deposited and creates between him and the depositor the relation of debtor and creditor merely.

History: En. Sec. 2540, Civ. C. 1895; re-en. Sec. 5187, Rev. C. 1907; re-en. Sec. 7701, R.C.M. 1921; Cal. Civ. C. Sec. 1878; Field Civ. C. Sec. 947; re-en. Sec. 7701, R.C.M. 1935; R.C.M. 1947, 20-501.

Part 2

Rights and Duties of the Parties Generally

70-6-201. Depositary not to use or open thing deposited. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

History: En. Sec. 2462, Civ. C. 1895; re-en. Sec. 5147, Rev. C. 1907; re-en. Sec. 7650, R.C.M. 1921; Cal. Civ. C. Sec. 1835; Field Civ. C. Sec. 921; re-en. Sec. 7650, R.C.M. 1935; R.C.M. 1947, 20-203.

70-6-202. Liability for damage from wrongful use. A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof unless such damage must inevitably have happened though the property had not been used.

History: En. Sec. 2463, Civ. C. 1895; re-en. Sec. 5148, Rev. C. 1907; re-en. Sec. 7651, R.C.M. 1921; Cal. Civ. C. Sec. 1836; Field Civ. C. Sec. 922; re-en. Sec. 7651, R.C.M. 1935; R.C.M. 1947, 20-204.

70-6-203. Loss or injury of thing deposited. If a thing is lost during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as he has information concerning them or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

History: En. Sec. 2465, Civ. C. 1895; re-en. Sec. 5150, Rev. C. 1907; re-en. Sec. 7653, R.C.M. 1921; Cal. Civ. C. Sec. 1838; Based on Field Civ. C. Sec. 924; re-en. Sec. 7653, R.C.M. 1935; R.C.M. 1947, 20-206.

Cross-References

Liability, Title 27, ch. 1, part 7.

70-6-204. Extent of depositary's liability for negligence. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor or has reason to suppose the thing deposited to be worth.

History: En. Sec. 2467, Civ. C. 1895; re-en. Sec. 5152, Rev. C. 1907; re-en. Sec. 7655, R.C.M. 1921; Cal. Civ. C. Sec. 1840; Based on Field Civ. C. Sec. 926; re-en. Sec. 7655, R.C.M. 1935; R.C.M. 1947, 20-208.

Cross-References

Liability, Title 27, ch. 1, part 7.

70-6-205. Sale of thing in danger of perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

History: En. Sec. 2464, Civ. C. 1895; re-en. Sec. 5149, Rev. C. 1907; re-en. Sec. 7652, R.C.M. 1921; Cal. Civ. C. Sec. 1837; Field Civ. C. Sec. 923; re-en. Sec. 7652, R.C.M. 1935; R.C.M. 1947, 20-205.

70-6-206. Duty of depositary of animals. A depositary of living animals must provide them with suitable food and shelter and treat them kindly.

History: En. Sec. 2461, Civ. C. 1895; re-en. Sec. 5146, Rev. C. 1907; re-en. Sec. 7649, R.C.M. 1921; Cal. Civ. C. Sec. 1834; Field Civ. C. Sec. 920; re-en. Sec. 7649, R.C.M. 1935; R.C.M. 1947, 20-202.

Cross-References

Cruelty to animals, 45-8-211.

70-6-207. Service rendered by depositary. So far as any service is rendered by a depositary or required from him, his duties and liabilities are prescribed by the law on employment and service.

History: En. Sec. 2466, Civ. C. 1895; re-en. Sec. 5151, Rev. C. 1907; re-en. Sec. 7654, R.C.M. 1921; Cal. Civ. C. Sec. 1839; Field Civ. C. Sec. 925; re-en. Sec. 7654, R.C.M. 1935; R.C.M. 1947, 20-207.

70-6-208. Notice to owner of adverse claim. A depositary must give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depositary from delivering the thing to him.

History: En. Sec. 2453, Civ. C. 1895; re-en. Sec. 5142, Rev. C. 1907; re-en. Sec. 7645, R.C.M. 1921; Cal. Civ. C. Sec. 1825; Field Civ. C. Sec. 916; re-en. Sec. 7645, R.C.M. 1935; R.C.M. 1947, 20-110.

70-6-209. Notice to true owner of thing wrongfully detained. A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit, and if within a reasonable time afterwards he does not claim it and sufficiently establish his right thereto and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice upon returning the thing to the depositor or assuming, in good faith, a new obligation changing his position in respect to the thing to his prejudice.

History: En. Sec. 2454, Civ. C. 1895; re-en. Sec. 5143, Rev. C. 1907; re-en. Sec. 7646, R.C.M. 1921; Cal. Civ. C. Sec. 1826; Field Civ. C. Sec. 917; re-en. Sec. 7646, R.C.M. 1935; R.C.M. 1947, 20-111.

70-6-210. Depositor to indemnify depositary — damage — expenses. A depositor must indemnify the depositary for:

(1) all damage caused to him by the defects or vices of the thing deposited; and

(2) all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

History: En. Sec. 2460, Civ. C. 1895; re-en. Sec. 5145, Rev. C. 1907; re-en. Sec. 7648, R.C.M. 1921; Cal. Civ. C. Sec. 1833; Field Civ. C. Sec. 919; re-en. Sec. 7648, R.C.M. 1935; R.C.M. 1947, 20-201.

70-6-211. Depositary to deliver on demand. A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited or has been forbidden or prevented from doing so by the real owner thereof or by the act of the law and has given the notice required by 70-6-208.

History: En. Sec. 2450, Civ. C. 1895; re-en. Sec. 5139, Rev. C. 1907; re-en. Sec. 7642, R.C.M. 1921; Cal. Civ. C. Sec. 1822; Field Civ. C. Sec. 913; re-en. Sec. 7642, R.C.M. 1935; R.C.M. 1947, 20-107.

Cross-References

Liens, Title 71, ch. 3, part 1.

70-6-212. No duty to deliver without demand. A depositary is not bound to deliver a thing deposited without demand even where the deposit is made for a specified time.

History: En. Sec. 2451, Civ. C. 1895; re-en. Sec. 5140, Rev. C. 1907; re-en. Sec. 7643, R.C.M. 1921; Cal. Civ. C. Sec. 1823; Field Civ. C. Sec. 914; re-en. Sec. 7643, R.C.M. 1935; R.C.M. 1947, 20-108.

70-6-213. Place of delivery. A depositary must deliver the thing deposited at his residence or place of business as may be most convenient for him.

History: En. Sec. 2452, Civ. C. 1895; re-en. Sec. 5141, Rev. C. 1907; re-en. Sec. 7644, R.C.M. 1921; Cal. Civ. C. Sec. 1824; Field Civ. C. Sec. 915; re-en. Sec. 7644, R.C.M. 1935; R.C.M. 1947, 20-109.

70-6-214. Delivery of thing owned jointly. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof if it can be done without injury to the thing.

History: En. Sec. 2455, Civ. C. 1895; re-en. Sec. 5144, Rev. C. 1907; re-en. Sec. 7647, R.C.M. 1921; Cal. Civ. C. Sec. 1827; Field Civ. C. Sec. 918; re-en. Sec. 7647, R.C.M. 1935; R.C.M. 1947, 20-112.

Part 3

Gratuitous Deposits

70-6-301. Gratuitous deposit defined. Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

History: En. Sec. 2480, Civ. C. 1895; re-en. Sec. 5153, Rev. C. 1907; re-en. Sec. 7656, R.C.M. 1921; Cal. Civ. C. Sec. 1844; Field Civ. C. Sec. 927; re-en. Sec. 7656, R.C.M. 1935; R.C.M. 1947, 20-209.

70-6-302. Degree of care required of gratuitous depositary. A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

History: En. Sec. 2482, Civ. C. 1895; re-en. Sec. 5155, Rev. C. 1907; re-en. Sec. 7658, R.C.M. 1921; Cal. Civ. C. Sec. 1846; Field Civ. C. Sec. 929; re-en. Sec. 7658, R.C.M. 1935; R.C.M. 1947, 20-211.

70-6-303. When duties of gratuitous depositary cease. The duties of a gratuitous depositary cease upon his:

(1) restoring the thing deposited to its owner; or

(2) giving reasonable notice to the owner to remove it and the owner failing to do so within a reasonable time. But an involuntary depositary under 70-6-103(2) cannot give such notice until the emergency which gave rise to the deposit is past.

History: En. Sec. 2483, Civ. C. 1895; re-en. Sec. 5156, Rev. C. 1907; re-en. Sec. 7659, R.C.M. 1921; Cal. Civ. C. Sec. 1847; Field Civ. C. Sec. 930; re-en. Sec. 7659, R.C.M. 1935; R.C.M. 1947, 20-212.

Part 4

Deposit for Hire — Storage

70-6-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

70-6-402. Deposit for hire defined. A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

History: En. Sec. 2490, Civ. C. 1895; re-en. Sec. 5157, Rev. C. 1907; re-en. Sec. 7660, R.C.M. 1921; Cal. Civ. C. Sec. 1851; Field Civ. C. Sec. 931; re-en. Sec. 7660, R.C.M. 1935; R.C.M. 1947, 20-301.

Cross-References

U.C.C. — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

70-6-403. Degree of care required of depositary for hire. A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

History: En. Sec. 2491, Civ. C. 1895; re-en. Sec. 5158, Rev. C. 1907; re-en. Sec. 7661, R.C.M. 1921; Cal. Civ. C. Sec. 1852; Field Civ. C. Sec. 932; re-en. Sec. 7661, R.C.M. 1935; R.C.M. 1947, 20-302.

70-6-404. Rate of compensation for fraction of week or half month. In the absence of a different agreement or usage, a depositary for hire is entitled to 1 week's hire for the sustenance and shelter of living animals during any fraction of a week and to half a month's hire for the storage of any other property during any fraction of a half month.

History: En. Sec. 2492, Civ. C. 1895; re-en. Sec. 5159, Rev. C. 1907; re-en. Sec. 7662, R.C.M. 1921; Cal. Civ. C. Sec. 1853; Field Civ. C. Sec. 933; re-en. Sec. 7662, R.C.M. 1935; R.C.M. 1947, 20-303.

70-6-405. Termination of deposit. (1) In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time and by the depositary upon a reasonable notice.

(2) Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

History: En. Secs. 2493, 2494, Civ. C. 1895; re-en. Secs. 5160, 5161, Rev. C. 1907; re-en. Secs. 7663, 7664, R.C.M. 1921; Cal. Civ. C. Secs. 1854, 1855; Field Civ. C. Secs. 934, 935; re-en. Secs. 7663, 7664, R.C.M. 1935; R.C.M. 1947, 20-304, 20-305.

70-6-406 through 70-6-410 reserved.

70-6-411. Sale to pay costs of storage. (1) Any storage or commission merchant receiving personal property from any person for storage and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof may, after keeping the same in store for 90 days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction to the highest bidder for cash, first giving notice of the time, the terms, and place of sale and a description of the property to be sold by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for 4 weeks next previous to the day of sale and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon.

(2) Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto in some other county in this state.

(3) But no more of such property shall be sold than is necessary to pay the charges due, together with the costs.

History: En. Sec. 1, p. 544, Cod. Stat. 1871; re-en. Sec. 1179, 5th Div. Rev. Stat. 1879; re-en. Sec. 1983, 5th Div. Comp. Stat. 1887; amd. Sec. 2495, Civ. C. 1895; amd. Sec. 1, p. 153, L. 1901; re-en. Sec. 5162, Rev. C. 1907; re-en. Sec. 7665, R.C.M. 1921; Cal. Civ. C. Secs. 1856, 1857; re-en. Sec. 7665, R.C.M. 1935; R.C.M. 1947, 20-306.

Cross-References

Warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

Sale of unclaimed baggage — notice, 70-9-501.

70-6-412. Application of proceeds of sale. (1) After paying the expenses of sale, including the publication of notice, the storage or commission merchant or the carrier shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof.

(2) All sales under this part shall vest the title to the property sold in the purchaser thereof.

History: En. Sec. 3, p. 545, Cod. Stat. 1871; re-en. Sec. 1181, 5th Div. Rev. Stat. 1879; re-en. Sec. 1895, 5th Div. Comp. Stat. 1887; amd. Sec. 2496, Civ. C. 1895; re-en. Sec. 2, p. 153, L. 1901; re-en. Sec. 5163, Rev. C. 1907; re-en. Sec. 7666, R.C.M. 1921; re-en. Sec. 7666, R.C.M. 1935; R.C.M. 1947, 20-307.

70-6-413 through 70-6-419 reserved.

70-6-420. Default in payment of storage space rental fees — notice — sale of contents. (1) A person who rents storage space to another may sell at public auction the contents of the storage space if the owner of the contents is more than 30 days in default in paying rental fees on the space.

(2) At the expiration of the period of default provided for in subsection (1), the person renting the storage space shall send written notice by certified mail to the last-known address of the owner of the contents that he has 30 days from the date of the certified letter to pay the past due rental fees and to claim the contents of the storage space or the contents will be sold at public auction. The notice must contain the date, time, and place of the auction if the past due rental fees are not paid. If the certified notice is returned undelivered, notice must be given as provided in Rule 4 of the Montana Rules of Civil Procedure.

(3) Prior to an auction provided for in subsection (1), notice of the date, time, place, terms, and description of the property must be published in a newspaper in the county in which the property to be sold is located. The notice must be published once a week for 2 weeks prior to the day of the sale. If there is no newspaper published in the county in which the property to be sold is located, then the notice may be published in a newspaper of general circulation in the county.

(4) (a) Proceeds of the auction must first be applied to the costs of the sale, then to the unpaid storage rental fees, and the excess, if any, must be paid to the owner. If the owner or the person entitled to the proceeds cannot be located, the proceeds escheat to the state as provided in Title 72, chapter 14.

(b) All sales under this section vest title to the property sold in the purchaser of the property.

History: **En. Sec. 1, Ch. 472, L. 1991.**

Part 5

Innkeepers

70-6-501. Innkeeper's liability as to property of guests — dollar limitation. (1) An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of someone whom he brought into the inn.

(2) The liability provided for in subsection (1) may not exceed $500 for all personal property of each registered guest unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is so limited shall notify the guest at the time of registration, in writing, that this limitation applies.

History: **En. Sec. 2500, Civ. C. 1895; re-en. Sec. 5164, Rev. C. 1907; re-en. Sec. 7673, R.C.M. 1921; Cal. Civ. C. Sec. 1859; Field Civ. C. Sec. 936; re-en. Sec. 7673, R.C.M. 1935; amd. Sec. 1, Ch. 14, L. 1977; R.C.M. 1947, 34-101.**

70-6-502. No liability without negligence. No hotelkeeper or innkeeper shall be liable to any guest for the loss of wearing apparel, goods, or personal effects where it shall appear that such loss occurred without the fault or negligence of such hotelkeeper or his employees.

History: **En. Sec. 2510, Civ. C. 1895; re-en. Sec. 5174, Rev. C. 1907; re-en. Sec. 7681, R.C.M. 1921; re-en. Sec. 7681, R.C.M. 1935; R.C.M. 1947, 34-109.**

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

70-6-503. Loss or damage by fire — liability for negligence. All innkeepers or hotelkeepers coming within the provisions of this part shall be liable for loss of or damage to any baggage or other property of their guests caused by fire in every case where such loss or damage is the result of the negligence of such keepers or their servants.

History: **En. Sec. 2509, Civ. C. 1895; re-en. Sec. 5173, Rev. C. 1907; re-en. Sec. 7680, R.C.M. 1921; re-en. Sec. 7680, R.C.M. 1935; R.C.M. 1947, 34-108.**

70-6-504. How exempted from liability — safe. If an innkeeper keeps a fireproof safe and gives notice to a guest, either personally or by placing a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe and will not be liable for money, jewelry, documents, or other articles of value and small compass unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of or injury to such articles not deposited with him and not required by the guest for present use.

History: En. Sec. 2501, Civ. C. 1895; re-en. Sec. 5165, Rev. C. 1907; re-en. Sec. 7674, R.C.M. 1921; Cal. Civ. C. Sec. 1860; Field. Civ. C. Sec. 937; re-en. Sec. 7674, R.C.M. 1935; R.C.M. 1947, 34-102; amd. Sec. 3, Ch. 115, L. 1979.

70-6-505. Storage of property in outbuilding — nonliability. No innkeeper shall be liable for the loss or destruction by fire of the property received by him from a guest, stored or being, with the knowledge of such guest, in a barn or other outbuilding, where it shall appear that such loss or destruction is the work of an incendiary and occurred without the fault or negligence of such innkeeper or his servants.

History: En. Sec. 2508, Civ. C. 1895; re-en. Sec. 5172, Rev. C. 1907; re-en. Sec. 7679, R.C.M. 1921; re-en. Sec. 7679, R.C.M. 1935; R.C.M. 1947, 34-107.

CHAPTER 7

LOANS FOR USE OR EXCHANGE PERSONAL PROPERTY

Part 1 — Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter.
70-7-102. Loan for use defined.
70-7-103. Title not transferred — increase.
70-7-104. Care required of borrower generally.
70-7-105. Borrower of animal — care required.
70-7-106. Skill required of borrower.
70-7-107. Borrower to repair injuries.
70-7-108. Use of thing lent — what permitted.
70-7-109. Relending forbidden.
70-7-110. Who to bear expenses.
70-7-111. Lender liable for concealed defects.
70-7-112. Right of lender to require return — indemnification of borrower.
70-7-113. When returnable without demand.
70-7-114. Place of return.

Part 2 — Loan for Exchange

70-7-201. Certain sections of previous part applicable.
70-7-202. Loan for exchange defined.
70-7-203. Title to property lent — expenses — increase.
70-7-204. Contract not to be modified by lender.

Part 1

Loan for Use

70-7-101. Optional loan — use or exchange — applicability of entire chapter. A loan which the borrower is allowed by the lender to treat as a loan for use or for exchange, at his option, is subject to all of the provisions of this chapter.

History: En. Sec. 2571, Civ. C. 1895; re-en. Sec. 5202, Rev. C. 1907; re-en. Sec. 7716, R.C.M. 1921; Cal. Civ. C. Sec. 1903; Field Civ. C. Sec. 962; re-en. Sec. 7716, R.C.M. 1935; R.C.M. 1947, 47-115.

70-7-102. Loan for use defined. A loan for use is a contract by which one gives to another the temporary use and possession of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

History: En. Sec. 2550, Civ. C. 1895; re-en. Sec. 5188, Rev. C. 1907; re-en. Sec. 7702, R.C.M. 1921; Cal. Civ. C. Sec. 1884; Field Civ. C. Sec. 948; re-en. Sec. 7702, R.C.M. 1935; R.C.M. 1947, 47-101.

Cross-References

Retail installment sales, Title 31, ch. 1, part 2.

70-7-103. Title not transferred — increase. A loan for use does not transfer the title to the thing, and all its increase during the period of the loan belongs to the lender.

History: En. Sec. 2551, Civ. C. 1895; re-en. Sec. 5189, Rev. C. 1907; re-en. Sec. 7703, R.C.M. 1921; Cal. Civ. C. Sec. 1885; Field Civ. C. Sec. 949; re-en. Sec. 7703, R.C.M. 1935; R.C.M. 1947, 47-102.

70-7-104. Care required of borrower generally. A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

History: En. Sec. 2552, Civ. C. 1895; re-en. Sec. 5190, Rev. C. 1907; re-en. Sec. 7704, R.C.M. 1921; Cal. Civ. C. Sec. 1886; Field Civ. C. Sec. 950; re-en. Sec. 7704, R.C.M. 1935; R.C.M. 1947, 47-103.

70-7-105. Borrower of animal — care required. One who borrows a living animal for use must treat it with great kindness and provide everything necessary and suitable for it.

History: En. Sec. 2553, Civ. C. 1895; re-en. Sec. 5191, Rev. C. 1907; re-en. Sec. 7705, R.C.M. 1921; Cal. Civ. C. Sec. 1887; Field Civ. C. Sec. 951; re-en. Sec. 7705, R.C.M. 1935; R.C.M. 1947, 47-104.

70-7-106. Skill required of borrower. A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

History: En. Sec. 2554, Civ. C. 1895; re-en. Sec. 5192, Rev. C. 1907; re-en. Sec. 7706, R.C.M. 1921; Cal. Civ. C. Sec. 1888; Field Civ. C. Sec. 952; re-en. Sec. 7706, R.C.M. 1935; R.C.M. 1947, 47-105.

70-7-107. Borrower to repair injuries. A borrower for use must repair all deteriorations or injuries to the thing lent which are occasioned by his negligence, however slight.

History: En. Sec. 2555, Civ. C. 1895; re-en. Sec. 5193, Rev. C. 1907; re-en. Sec. 7707, R.C.M. 1921; Cal. Civ. C. Sec. 1889; Field Civ. C. Sec. 953; re-en. Sec. 7707, R.C.M. 1935; R.C.M. 1947, 47-106.

70-7-108. Use of thing lent — what permitted. The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

History: En. Sec. 2556, Civ. C. 1895; re-en. Sec. 5194, Rev. C. 1907; re-en. Sec. 7708, R.C.M. 1921; Cal. Civ. C. Sec. 1890; Field Civ. C. Sec. 954; re-en. Sec. 7708, R.C.M. 1935; R.C.M. 1947, 47-107.

70-7-109. Relending forbidden. The borrower of a thing for use must not part with it to a third person without the consent of the lender.

History: En. Sec. 2557, Civ. C. 1895; re-en. Sec. 5195, Rev. C. 1907; re-en. Sec. 7709, R.C.M. 1921; Cal. Civ. C. Sec. 1891; Field Civ. C. Sec. 955; re-en. Sec. 7709, R.C.M. 1935; R.C.M. 1947, 47-108.

70-7-110. Who to bear expenses. The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

History: En. Sec. 2558, Civ. C. 1895; re-en. Sec. 5196, Rev. C. 1907; re-en. Sec. 7710, R.C.M. 1921; Cal. Civ. C. Sec. 1892; Field Civ. C. Sec. 956; re-en. Sec. 7710, R.C.M. 1935; R.C.M. 1947, 47-109.

70-7-111. Lender liable for concealed defects. The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it which he knew at the time of lending and concealed from the borrower.

History: En. Sec. 2559, Civ. C. 1895; re-en. Sec. 5197, Rev. C. 1907; re-en. Sec. 7711, R.C.M. 1921; Cal. Civ. C. Sec. 1893; Field Civ. C. Sec. 957; re-en. Sec. 7711, R.C.M. 1935; R.C.M. 1947, 47-110.

70-7-112. Right of lender to require return — indemnification of borrower. The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if on the faith of such an agreement the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss if he compels such return, the borrower not having in any manner violated his duty.

History: En. Sec. 2560, Civ. C. 1895; re-en. Sec. 5198, Rev. C. 1907; re-en. Sec. 7712, R.C.M. 1921; Cal. Civ. C. Sec. 1894; Field Civ. C. Sec. 958; re-en. Sec. 7712, R.C.M. 1935; R.C.M. 1947, 47-111.

70-7-113. When returnable without demand. If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired or the purpose has been accomplished. In other cases it need not be returned until demanded.

History: En. Sec. 2561, Civ. C. 1895; re-en. Sec. 5199, Rev. C. 1907; re-en. Sec. 7713, R.C.M. 1921; Cal. Civ. C. Sec. 1895; Field Civ. C. Sec. 959; re-en. Sec. 7713, R.C.M. 1935; R.C.M. 1947, 47-112.

70-7-114. Place of return. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of lending or, if no particular place was so contemplated by them, then at the place where it was at that time.

History: En. Sec. 2562, Civ. C. 1895; re-en. Sec. 5200, Rev. C. 1907; re-en. Sec. 7714, R.C.M. 1921; Cal. Civ. C. Sec. 1896; Field Civ. C. Sec. 960; re-en. Sec. 7714, R.C.M. 1935; R.C.M. 1947, 47-113.

Part 2

Loan for Exchange

70-7-201. Certain sections of previous part applicable. Sections 70-7-111, 70-7-112, and 70-7-113 apply to a loan for exchange.

History: En. Sec. 2574, Civ. C. 1895; re-en. Sec. 5205, Rev. C. 1907; re-en. Sec. 7719, R.C.M. 1921; Cal. Civ. C. Sec. 1906; Field Civ. C. Sec. 965; re-en. Sec. 7719, R.C.M. 1935; R.C.M. 1947, 47-118.

70-7-202. Loan for exchange defined. A loan for exchange is a contract by which one delivers personal property to another and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

History: En. Sec. 2570, Civ. C. 1895; re-en. Sec. 5201, Rev. C. 1907; re-en. Sec. 7715, R.C.M. 1921; Cal. Civ. C. Sec. 1902; Field Civ. C. Sec. 961; re-en. Sec. 7715, R.C.M. 1935; R.C.M. 1947, 47-114.

70-7-203. Title to property lent — expenses — increase. By a loan for exchange, the title to the thing lent is transferred to the borrower, and he must bear all its expenses and is entitled to all its increase.

History: En. Sec. 2572, Civ. C. 1895; re-en. Sec. 5203, Rev. C. 1907; re-en. Sec. 7717, R.C.M. 1921; Cal. Civ. C. Sec. 1904; re-en. Sec. 7717, R.C.M. 1935; R.C.M. 1947, 47-116.

70-7-204. Contract not to be modified by lender. A lender for exchange cannot require the borrower to fulfill his obligations at a time or in a manner different from that which was originally agreed upon.

History: En. Sec. 2573, Civ. C. 1895; re-en. Sec. 5204, Rev. C. 1907; re-en. Sec. 7718, R.C.M. 1921; Cal. Civ. C. Sec. 1905; Field Civ. C. Sec. 964; re-en. Sec. 7718, R.C.M. 1935; R.C.M. 1947, 47-117.

CHAPTER 8

RENTALS OF PERSONAL PROPERTY

Part 1 — General Provisions
(Repealed. Sec. 230, Ch. 410, L. 1991)

Part 2 — Rental of Ships

70-8-201. Contract for letting of ship.

Part 1

General Provisions (Repealed. Sec. 230, Ch. 410, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

70-8-101. En. Sec. 2640, Civ. C. 1895; re-en. Sec. 5236, Rev. C. 1907; re-en. Sec. 7751, R.C.M. 1921; Cal. Civ. C. Sec. 1955; Field Civ. C. Sec. 999; re-en. Sec. 7751, R.C.M. 1935; R.C.M. 1947, 42-211.

70-8-102. En. Sec. 2641, Civ. C. 1895; re-en. Sec. 5237, Rev. C. 1907; re-en. Sec. 7752, R.C.M. 1921; Cal. Civ. C. Sec. 1956; Field Civ. C. Sec. 1000; re-en. Sec. 7752, R.C.M. 1935; R.C.M. 1947, 42-212.

70-8-103. En. Sec. 2642, Civ. C. 1895; re-en. Sec. 5238, Rev. C. 1907; re-en. Sec. 7753, R.C.M. 1921; Cal. Civ. C. Sec. 1957; Field Civ. C. Sec. 1001; re-en. Sec. 7753, R.C.M. 1935; R.C.M. 1947, 42-213.

70-8-104. En. Sec. 2643, Civ. C. 1895; re-en. Sec. 5239, Rev. C. 1907; re-en. Sec. 7754, R.C.M. 1921; Cal. Civ. C. Sec. 1958; Field Civ. C. Sec. 1002; re-en. Sec. 7754, R.C.M. 1935; R.C.M. 1947, 42-214.

Part 2

Rental of Ships

70-8-201. Contract for letting of ship. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

History: En. Sec. 2644, Civ. C. 1895; re-en. Sec. 5240, Rev. C. 1907; re-en. Sec. 7755, R.C.M. 1921; Cal. Civ. C. Sec. 1959; Field Civ. C. Sec. 1003; re-en. Sec. 7755, R.C.M. 1935; R.C.M. 1947, 42-215.

CHAPTER 9

DISPOSITION OF UNCLAIMED PROPERTY

Part 1 — General Provisions

70-9-101. Short title.
70-9-102. Definitions.
70-9-103. Repealed.
70-9-104. Uniformity of interpretation.
70-9-105. Department rulemaking — representation by assistant attorney general.
70-9-106. Uniform Unclaimed Property Act superseded.
70-9-107 through 70-9-110 reserved.
70-9-111. General rules for taking custody of intangible unclaimed property.
70-9-112 through 70-9-120 reserved.
70-9-121. Interstate agreements and cooperation.
70-9-122. Joint and reciprocal actions with other states.

Part 2 — Presumption of Abandonment Kinds of Property

70-9-201. Property held by banking or financial organization or business association.
70-9-202. Unclaimed funds held by life insurance corporation.
70-9-203. Deposits and refunds held by utility.
70-9-204. Stock, dividends, and distributions of business association.
70-9-205. Property of business association or of banking or financial organization held in course of dissolution.
70-9-206. Property held by fiduciary.
70-9-207. Property held by court or public officer or agency.
70-9-208. Miscellaneous property held for another person.
70-9-209. Gift certificates and credit memos.
70-9-210. Intangible property issued in state by entity created by state — presumptions of abandonment.

Part 3 — Procedure

70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing.
70-9-302. Notice of property presumed abandoned — publication.
70-9-303. Payment or delivery of abandoned property to department — service charges.
70-9-304. Relief from liability by payment or delivery to department.
70-9-305. Reimbursement to holder for payment to owner or other state.
70-9-306. Income accruing after payment or delivery to department.
70-9-307. Period of limitations not to prevent presumption or affect duties — limitation on department action.
70-9-308. Sale of abandoned property — notice — title of purchaser.
70-9-309. Deposit of moneys — record — deduction of costs.
70-9-310. Claim for property paid or delivered — filing.
70-9-311. Determination and payment of claim.
70-9-312. Appeal to court from decision of tax board — trial de novo.
70-9-313. Repealed.
70-9-314. Records requirements — examination.
70-9-315. Proceeding to compel delivery of property.
70-9-316. Penalties.

Part 4 — Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code.
70-9-402. Storage of unclaimed property.

70-9-403. Property unclaimed within 90 days to be sold — notice — surplus.
70-9-404. Surplus proceeds unclaimed — disposition.
70-9-405. Responsibility of carrier and bailee after storage.
70-9-406. Sale of property upon which advances are due.
70-9-407. Fees of officers.

Part 5 — Innkeepers

70-9-501. Sale of unclaimed baggage — notice.
70-9-502. Disposition of surplus proceeds.

Chapter Cross-References

State warrants — failure to claim payment, 17-8-303.

Part 1

General Provisions

70-9-101. Short title. Parts 1 through 3 of this chapter may be cited as the "Uniform Unclaimed Property Act".

History: En. Sec. 30, Ch. 244, L. 1963; R.C.M. 1947, 67-2230; amd. Sec. 1, Ch. 269, L. 1983.

70-9-102. Definitions. As used in parts 1 through 3, unless the context otherwise requires, the following definitions apply:

(1) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or private banker engaged in business in this state.

(2) "Business association" means any corporation, other than a public corporation, joint-stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Department" means the department of revenue provided for in 2-15-1301.

(4) "Financial organization" means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company engaged in business in this state.

(5) "Holder" means any person in possession of property subject to parts 1 through 3 belonging to another or who is trustee in case of a trust or is indebted to another on an obligation subject to parts 1 through 3.

(6) "Intangible property" includes:

(a) money, checks, drafts, deposits, interest, dividends, and income;

(b) credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(c) stocks and other intangible ownership interests in business associations;

(d) money deposited to redeem stocks, bonds, coupons, and other securities or to make distributions;

(e) amounts due and payable under the terms of insurance policies; and

(f) amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(7) "Last-known address" means a description, in the records of the holder, of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(8) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(9) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or a creditor, claimant, or payee in case of other choses in action or any person having a legal or equitable interest in property subject to parts 1 through 3 or his legal representative.

(10) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(11) "Utility" means any person who owns or operates within this state for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: En. Sec. 1, Ch. 244, L. 1963; R.C.M. 1947, 67-2201; amd. Sec. 2, Ch. 269, L. 1983.

70-9-103. Repealed. Sec. 13, Ch. 269, L. 1983.

History: En. Secs. 10, 27, Ch. 244, L. 1963; R.C.M. 1947, 67-2210, 67-2227.

70-9-104. Uniformity of interpretation. Parts 1 through 3 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact the act.

History: En. Sec. 29, Ch. 244, L. 1963; R.C.M. 1947, 67-2229.

70-9-105. Department rulemaking — representation by assistant attorney general. The department of revenue is hereby authorized to make necessary rules to carry out the provisions of parts 1 through 3 and shall be represented in the enforcement of the provisions of those parts by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963; amd. Sec. 16, Ch. 216, L. 1971; amd. Sec. 39, Ch. 391, L. 1973; R.C.M. 1947, 67-2226.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

70-9-106. Uniform Unclaimed Property Act superseded. The provisions of Title 22, chapter 3, part 5, supersede the provisions of parts 1 through 3 of this chapter, except that at its option a museum, as defined in

22-3-503, may report property, as defined in 22-3-503, that has been on loan, as defined in 22-3-503, unclaimed by its owner for more than 5 years to the department of revenue for disposition as provided in part 3 of this chapter.

History: En. Sec. 12, Ch. 630, L. 1985; amd. Sec. 1, Ch. 5, L. 1987.

70-9-107 through 70-9-110 reserved.

70-9-111. General rules for taking custody of intangible unclaimed property. (1) Unless otherwise provided by law, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under part 2 are satisfied and:

(a) the last-known address of the apparent owner, as shown on the records of the holder, is in this state;

(b) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last-known address of the person entitled to the property is in this state;

(c) the records of the holder do not reflect the last-known address of the apparent owner and it is established that:

(i) the last-known address of the person entitled to the property is in this state; or

(ii) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last-known address of the apparent owner or other person entitled to the property;

(d) the last-known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(e) the last-known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(f) the transaction out of which the property arose occurred in this state; and

(i) (A) the last-known address of the apparent owner or other person entitled to the property is unknown; or

(B) the last-known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(ii) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

(2) No sum payable on a traveler's check, money order, or similar written instrument, other than a third-party bank check, may be subjected to the custody of this state as unclaimed property unless:

(a) the records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;

(b) the issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

(c) the issuer has its principal place of business in this state, the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

History: En. Sec. 3, Ch. 269, L. 1983.

70-9-112 through 70-9-120 reserved.

70-9-121. Interstate agreements and cooperation. (1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department may require the reporting of information needed to enable compliance with agreements made pursuant to this section.

(2) To avoid conflicts between the department's procedures and the procedures of administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act, the department, as far as is consistent with the purposes, policies, and provisions of this chapter, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in such other jurisdictions.

History: En. Sec. 11, Ch. 269, L. 1983.

Cross-References

Penalty provision, 70-9-316.

70-9-122. Joint and reciprocal actions with other states. (1) The department may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(2) At the request of another state, the attorney general of this state may bring an action in the name of the department of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(3) The department may request that the attorney general of another state or any other person bring an action in the name of the administrator in the other state. This state shall pay all expenses, including attorney fees, in any action under this subsection. The department may agree to pay the person bringing the action attorney fees based in whole or in part on a percentage of the value of any property recovered in the action. No expenses paid pursuant to this subsection may be deducted from the amount that is subject to the claim by the owner under this chapter.

History: En. Sec. 12, Ch. 269, L. 1983.

Cross-References

Penalty provision, 70-9-316.

Part 2

Presumption of Abandonment

Kinds of Property

70-9-201. Property held by banking or financial organization or business association. The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(1) any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has within 5 years:

(a) increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) corresponded in writing with the banking organization concerning the deposit; or

(c) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

(2) any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 5 years:

(a) increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends;

(b) corresponded in writing with the financial organization concerning the funds or deposit; or

(c) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3) any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and travelers' checks that, with the exception of travelers' checks, has been outstanding for more than 5 years from the date it was payable or from the date of its issuance if payable on demand or, in the case of travelers' checks, that has been outstanding for more than 15 years from the date of its issuance unless the owner has within 5 years or within 15 years in the case of travelers' checks corresponded in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association;

(4) any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason or any surplus amounts arising from the sale thereof pursuant to law that have been unclaimed by the owner for more than 5 years from the date on which the lease or rental period expired;

(5) any funds, documents, or other items of personal property, tangible or intangible, held in escrow that have been unclaimed by parties to the escrow agreement for a period of 5 years from the date on which full performance of the instrument held in escrow was to have been completed or for a period of 5 years from the date of the initial defaulted payment in a continuous series of defaulted payments due pursuant to the instrument held in escrow.

History: En. Sec. 2, Ch. 244, L. 1963; amd. Sec. 1, Ch. 226, L. 1967; R.C.M. 1947, 67-2202; amd. Sec. 2, Ch. 5, L. 1987; amd. Sec. 1, Ch. 143, L. 1989.

Cross-References
Financial Institutions, Title 32.

70-9-202. Unclaimed funds held by life insurance corporation. (1) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last-known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last-known address of the person entitled to the funds is the same as the last-known address of the insured or annuitant according to the records of the corporation.

(2) "Unclaimed funds", as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than 5 years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based unless the person appearing entitled thereto has within the preceding 5 years assigned, readjusted, or paid premiums on the policy or subjected the policy to loan or corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: En. Sec. 3, Ch. 244, L. 1963; R.C.M. 1947, 67-2203; amd. Sec. 3, Ch. 5, L. 1987.

Cross-References
Life insurance, Title 33, ch. 20.

70-9-203. Deposits and refunds held by utility. The following funds held or owing by any utility are presumed abandoned:

(1) any deposit made by a subscriber with a utility to secure payment for or any sum paid in advance for utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 5 years after the termination of the services for which the deposit or advance payment was made;

(2) any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 5 years after the date it became payable in accordance with the final determination or order providing for the refund.

History: En. Sec. 4, Ch. 244, L. 1963; R.C.M. 1947, 67-2204; amd. Sec. 4, Ch. 5, L. 1987.

Cross-References

Public Utilities and Carriers, Title 69.

70-9-204. Stock, dividends, and distributions of business association. (1) Any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within 5 years after the date prescribed for payment or delivery is presumed abandoned if it is held or owing by a business association:

(a) organized under the laws of or created in this state; or

(b) doing business in this state but not organized under the laws of or created in this state and the records of the business association indicate that the last-known address of the person entitled thereto is in this state.

(2) Any intangible interest in a business association as evidenced by the stock or membership records of the association is presumed abandoned and the association deemed the holder thereof when:

(a) the interest in the association is owned by a person who for more than 5 years has not claimed a dividend or other sum referred to in subsection (1);

(b) the records of the association indicate that the last-known address of the person entitled to the dividend is in this state; and

(c) the association is:

(i) organized under the laws of or created in this state; or

(ii) doing business in this state but not organized under the laws of or created in this state.

(3) Any dividends or other distributions held for or owing to a person at the time an intangible interest in a business association is presumed abandoned pursuant to subsection (2) are presumed abandoned.

History: En. Sec. 5, Ch. 244, L. 1963; R.C.M. 1947, 67-2205; amd. Sec. 1, Ch. 575, L. 1979; amd. Sec. 5, Ch. 5, L. 1987.

70-9-205. Property of business association or of banking or financial organization held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state that is unclaimed by the owner on the date for final distribution is presumed abandoned.

History: En. Sec. 6, Ch. 244, L. 1963; R.C.M. 1947, 67-2206; amd. Sec. 2, Ch. 575, L. 1979.

70-9-206. Property held by fiduciary. All intangible personal property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within 5 years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) if the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state;

(2) if it is held by a business association, banking organization, or financial organization doing business in this state but not organized under the laws of or created in this state and the records of the business association, banking organization, or financial organization indicate that the last-known address of the person entitled thereto is in this state; or

(3) if it is held in this state by another person.

History: En. Sec. 7, Ch. 244, L. 1963; R.C.M. 1947, 67-2207; amd. Sec. 6, Ch. 5, L. 1987.

Cross-References

Duties of trustees, Title 72, ch. 34, part 1.

70-9-207. Property held by court or public officer or agency. (1) All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state or a political subdivision thereof that has remained unclaimed by the owner for more than 5 years is presumed abandoned.

(2) All intangible personal property held for the owner by any court, department, agency, or officer of the United States, that has remained unclaimed by the owner for more than 5 years is presumed abandoned when the records of the holder indicate that the last-known address of the owner is in this state.

History: En. Sec. 8, Ch. 244, L. 1963; R.C.M. 1947, 67-2208; amd. Sec. 3, Ch. 575, L. 1979; amd. Sec. 7, Ch. 5, L. 1987.

Cross-References

Disposition of unclaimed funds from liquidated bank, 32-1-537.

70-9-208. Miscellaneous property held for another person. All intangible personal property not otherwise covered by parts 1 through 3, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 5 years after it became payable or distributable is presumed abandoned.

History: En. Sec. 9, Ch. 244, L. 1963; R.C.M. 1947, 67-2209; amd. Sec. 8, Ch. 5, L. 1987.

70-9-209. Gift certificates and credit memos. (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than 5 years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

History: En. Sec. 4, Ch. 269, L. 1983; amd. Sec. 9, Ch. 5, L. 1987.

70-9-210. Intangible property issued in state by entity created by state — presumptions of abandonment. (1) Intangible property is presumed abandoned and subject to the custody of this state as unclaimed property if:

(a) the owner has not claimed or corresponded in writing concerning the property within 5 years after the date prescribed for payment or delivery;

(b) the address of the owner is unknown; and

(c) the entity originating or issuing the intangible property is the state or a local political subdivision of the state or is or at the relevant time was incorporated, organized, or created in the state.

(2) For the purposes of this section, intangible property includes but is not limited to interest, dividends, or other earnings of the intangible property, less lawful charges, held by a business association, governmental entity, or other person or entity.

History: En. Sec. 1, Ch. 654, L. 1991.

Compiler's Comments

Applicability: Section 9(2), Ch. 654, L. 1991, provided that this section applies to all abandoned property held after September 30, 1991, regardless of when the property became presumptively abandoned.

Part 3

Procedure

70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing. (1) Every person holding money or other property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to the department as provided in this part.

(2) The report must be verified and must include:

(a) except with respect to travelers' checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $25 or more presumed abandoned under parts 1 through 3;

(b) in case of unclaimed money of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items less than $25 of value each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information which the department prescribes by rule as necessary for the administration of parts 1 through 3.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report must be filed before November 1 every year as of the preceding June 30, but the reports of life insurance corporations, banking and financial organizations, and cooperatives must be filed before May 1 of each year as of the preceding December 31. The department may postpone the reporting date upon written request by any person required to file a report. The department shall furnish forms for this report.

(5) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under parts 1 through 3 shall send written notice to the apparent owner at his last-known address informing him that the holder is in possession of property subject to this chapter if:

(a) the holder has in his records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by the statute of limitations; and

(c) the property has a value of $100 or more.

(6) Verification if made by a partnership must be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

History: **En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967; amd. Sec. 1, Ch. 216, L. 1971; amd. Sec. 24, Ch. 391, L. 1973; amd. Sec. 1, Ch. 195, L. 1977; R.C.M. 1947, 67-2211(1) thru (6); amd. Sec. 6, Ch. 269, L. 1983; amd. Sec. 10, Ch. 5, L. 1987; amd. Sec. 2, Ch. 654, L. 1991.**

Compiler's Comments

1991 Amendment: In (2)(c) increased value from $10 to $25; and made minor changes in style. Amendment effective April 26, 1991.

70-9-302. Notice of property presumed abandoned — publication. (1) The department shall publish notice of property presumed abandoned not later than March 1 after the report required by 70-9-301 is due or, in the case of property reported by life insurance corporations, banking and financial organizations, and cooperatives, August 1 of the year the report is due. The notice must be published at least once a week for 2 consecutive weeks in a newspaper of general circulation in the county in this state in which the last-known address of any person to be named in the notice is located. If an address is not listed or the address is outside the state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and must contain:

(a) the names, in alphabetical order, and last-known addresses, if any, of persons listed in the report and entitled to notice within the county;

(b) a statement that information concerning the amount or description of the property may be obtained by a person possessing an interest in the property by addressing an inquiry to the department; and

(c) a statement that if proof of claim is presented by the owner and if the owner's right to receive the property is established to the department's satisfaction, the property will be returned to the owner.

(3) The department is not required to publish in the notice any item of less than $100 unless the department considers publication to be in the public interest.

(4) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under 70-9-201.

History: En. Sec. 12, Ch. 244, L. 1963; amd. Sec. 3, Ch. 226, L. 1967; amd. Sec. 2, Ch. 216, L. 1971; amd. Sec. 25, Ch. 391, L. 1973; R.C.M. 1947, 67-2212; amd. Sec. 4, Ch. 115, L. 1979; amd. Sec. 4, Ch. 575, L. 1979; amd. Sec. 7, Ch. 269, L. 1983; amd. Sec. 3, Ch. 654, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(b), after "property", deleted "and the name and address of the holder"; in (2)(c), before "satisfaction", substituted "department's" for "holder's" and after "satisfaction" substituted "the property will be returned to the owner" for "within 65 days from the date of the second published notice, the abandoned property will be placed, not later than 85 days after such publication date, in the custody of the department, to whom all further claims must thereafter be directed"; and made minor changes in style. Amendment effective April 26, 1991.

70-9-303. Payment or delivery of abandoned property to department — service charges. (1) A person who has filed a report as provided by 70-9-301 shall pay or deliver to the department of revenue all abandoned property specified in the report at the time the report is filed.

(2) A service, handling, maintenance, or other charge or fee of any kind may not be deducted or withheld from any property subject to escheat under this chapter unless specifically permitted by this chapter.

(3) Even when specifically permitted by this chapter, charges or fees may not be excluded, withheld, or deducted from property subject to this chapter if, under its normal procedure, the holder would not have excluded, withheld, or deducted the charges or fees if the property had been claimed by the owner prior to being reported or remitted to the department.

History: En. Sec. 13, Ch. 244, L. 1963; amd. Sec. 4, Ch. 226, L. 1967; amd. Sec. 3, Ch. 216, L. 1971; amd. Sec. 26, Ch. 391, L. 1973; R.C.M. 1947, 67-2213; (2), (3)En. Sec. 5, Ch. 269, L. 1983; amd. Sec. 4, Ch. 654, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "shall", deleted "within 20 days after the time specified in 70-9-302 for claiming the property from the holder or, in the case of sums payable on travelers' checks or money orders presumed abandoned under 70-9-201, within 20 days after the filing of the report" and at end substituted "at the time the report is filed" for "except that if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in 70-9-302 or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment"; and made minor changes in style. Amendment effective April 26, 1991.

70-9-304. Relief from liability by payment or delivery to department. (1) Upon the payment or delivery of abandoned property to the department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof.

(2) Any person who pays or delivers abandoned property to the department under parts 1 through 3 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(3) Any person who delivers duplicate stock or other duplicate certificates of ownership to the department under parts 1 through 3 is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property, including but not limited to a claim by a person attempting to redeem the original certificate.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part); amd. Sec. 5, Ch. 575, L. 1979.

70-9-305. Reimbursement to holder for payment to owner or other state. (1) Any holder who has paid moneys to the department of revenue pursuant to parts 1 through 3 may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the department shall forthwith reimburse the holder for the payment.

(2) Any holder who has paid moneys to the department pursuant to parts 1 through 3 and after exhausting his legal remedies is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the department was notified in writing of the claim of such other state within 30 days after such claim has been asserted, the department shall refund to such holder the amount of such second payment not in excess of the amount paid to the department under parts 1 through 3.

History: En. Sec. 14, Ch. 244, L. 1963; amd. Sec. 4, Ch. 216, L. 1971; amd. Sec. 27, Ch. 391, L. 1973; R.C.M. 1947, 67-2214(part).

70-9-306. Income accruing after payment or delivery to department. When property is paid or delivered to the department of revenue under parts 1 through 3, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963; amd. Sec. 5, Ch. 216, L. 1971; amd. Sec. 28, Ch. 391, L. 1973; R.C.M. 1947, 67-2215.

70-9-307. Period of limitations not to prevent presumption or affect duties — limitation on department action. (1) The expiration of any period of time specified by statute or court order during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property does not:

(a) prevent the money or property from being presumed abandoned property or affect any duty to file a report required by parts 1 through 3 or to pay or deliver abandoned property to the department; or

(b) constitute a defense in an action or proceeding brought by or on behalf of the department against the federal government, a state government, a local government, or an officer or employee of the federal, state, or local government for the payment or delivery of abandoned property to the department pursuant to this chapter or to enforce or collect a penalty imposed by this chapter.

(2) Except as provided in subsection (1)(b), an action or proceeding may not be commenced by the department with respect to a duty of a holder under parts 1 through 3 more than 10 years after the duty arose.

History: **En. Sec. 16, Ch. 244, L. 1963; amd. Sec. 6, Ch. 216, L. 1971; amd. Sec. 29, Ch. 391, L. 1973; R.C.M. 1947, 67-2216; amd. Sec. 8, Ch. 269, L. 1983; amd. Sec. 5, Ch. 654, L. 1991.**

Compiler's Comments

1991 Amendment: Inserted (1)(b) providing that the expiration of a time period does not constitute a defense against certain governmental entities; at beginning of (2) inserted exception clause; and made minor changes in style.

Applicability: Section 9(2), Ch. 654, L. 1991, provided that this section applies to all abandoned property held after September 30, 1991, regardless of when the property became presumptively abandoned.

70-9-308. Sale of abandoned property — notice — title of purchaser. (1) Except as provided in subsection (2), all abandoned property other than money delivered to the department of revenue under parts 1 through 3 shall within 1 year after the delivery be sold by the department to the highest bidder at public sale in whatever city in the state affords in the department's judgment the most favorable market for the property involved. The department may decline highest bid and reoffer the property for sale if the department considers the price bid insufficient. The department need not offer any property for sale if, in the department's opinion, the probable cost of sale exceeds the value of the property.

(2) Securities listed on an established stock exchange shall be sold at the prevailing prices on such exchange. Other securities may be sold over the counter at prevailing prices or by such other method as the department may determine to be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. Securities that have little or no value may be held by the department of revenue and sold at its discretion as provided by this section.

(3) Any sale held under this section shall be preceded by a single publication of notice thereof at least 3 weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(4) The purchaser at any sale conducted by the department pursuant to parts 1 through 3 shall receive title to the property purchased free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of title.

History: **En. Sec. 17, Ch. 244, L. 1963; amd. Sec. 7, Ch. 216, L. 1971; amd. Sec. 30, Ch. 391, L. 1973; R.C.M. 1947, 67-2217; amd. Sec. 6, Ch. 575, L. 1979.**

Cross-References

Securities regulation, Title 30, ch. 10.

70-9-309. Deposit of moneys — record — deduction of costs. (1) All moneys received under parts 1 through 3, including the proceeds from the sale of abandoned property under 70-9-308, shall forthwith be deposited by the department of revenue with the state treasurer for credit to the public school nonexpendable trust fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding $25,000 from which he shall make prompt payment of claims allowed by the department as hereinafter provided.

(2) Before making the deposit the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant and, with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(3) Before making any deposit to the credit of the public school nonexpendable trust fund, the department may deduct:

(a) any costs in connection with sale of abandoned property;

(b) any costs of mailing and publication in connection with any abandoned property; and

(c) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963; amd. Sec. 8, Ch. 216, L. 1971; amd. Sec. 31, Ch. 391, L. 1973; R.C.M. 1947, 67-2218; amd. Sec. 30, Ch. 281, L. 1983.

70-9-310. Claim for property paid or delivered — filing. Any person claiming an interest in any property delivered to the state under parts 1 through 3 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the department of revenue, except that no claim for less than $10 may be filed.

History: En. Sec. 19, Ch. 244, L. 1963; amd. Sec. 9, Ch. 216, L. 1971; amd. Sec. 32, Ch. 391, L. 1973; amd. Sec. 2, Ch. 195, L. 1977; R.C.M. 1947, 67-2219.

Cross-References

Cancellation of state warrants, 17-8-303.

70-9-311. Determination and payment of claim. (1) The department of revenue shall consider any claim filed under parts 1 through 3 and issue a written determination of the claim.

(2) An aggrieved claimant may appeal to the state tax appeal board, which shall hold a hearing and receive evidence concerning the claim. If a hearing is held, the board shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the board and the reasons for the board's decision. The decision shall be a public record.

(3) If the claim is allowed, the department shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963; amd. Sec. 10, Ch. 216, L. 1971; amd. Sec. 33, Ch. 391, L. 1973; amd. Sec. 9, Ch. 155, L. 1977; R.C.M. 1947, 67-2220.

70-9-312. Appeal to court from decision of tax board — trial de novo. Any person aggrieved by a decision of the state tax appeal board or as to whose claim the board has failed to act within 90 days after the filing of the claim may commence an action in the district court of Lewis and Clark County to establish his claim. The proceeding shall be brought within 90 days after the decision of the state tax appeal board or within 180 days from the filing of the claim if the board fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963; amd. Sec. 11, Ch. 216, L. 1971; amd. Sec. 34, Ch. 391, L. 1973; amd. Sec. 10, Ch. 155, L. 1977; R.C.M. 1947, 67-2221.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

Property tax appeals, Title 15, ch. 15.

70-9-313. Repealed. Sec. 8, Ch. 654, L. 1991.

History: En. Sec. 22, Ch. 244, L. 1963; amd. Sec. 12, Ch. 216, L. 1971; amd. Sec. 35, Ch. 391, L. 1973; R.C.M. 1947, 67-2222.

70-9-314. Records requirements — examination. (1) Every holder required to file a report under 70-9-301 concerning any property for which it has obtained the last-known address of the owner shall maintain a record of the name and last-known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2).

(2) Any business association that sells its travelers' checks, money orders, or similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue, for 5 years after the date the property is reportable.

(3) The department or its designated agent may at reasonable times and upon reasonable notice examine the records of any person who it has reason to believe may be holding unclaimed property. In addition, the department shall, in the course of conducting an investigation, examination, or audit under Title 15, identify any abandoned property which is subject to parts 1 through 3.

(4) The commissioner of insurance shall, in the course of conducting an investigation, examination, or audit under Title 33, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department.

(5) The department of commerce shall, in the course of conducting an investigation, examination, or audit under Title 32, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department.

(6) If a holder fails to maintain the records required by this section or if his records for the period subject to this chapter are insufficient to permit the preparation of a report, the department may require him to report and pay such amounts as the department may reasonably estimate from any available records.

History: En. Sec. 23, Ch. 244, L. 1963; amd. Sec. 13, Ch. 216, L. 1971; amd. Sec. 36, Ch. 391, L. 1973; R.C.M. 1947, 67-2223; amd. Sec. 1, Ch. 128, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 9, Ch. 269, L. 1983; amd. Sec. 1, Ch. 14, L. 1989.

Compiler's Comments

Retroactive Applicability: Section 6, Ch. 654, L. 1991, amended sec. 3, Ch. 14, L. 1989, to make the 1989 amendment to this section apply retroactively to tax years beginning after December 31, 1976, instead of December 31, 1988. Amendment by sec. 6 effective April 26, 1991.

70-9-315. Proceeding to compel delivery of property. If any person refuses to deliver property to the department of revenue as required under parts 1 through 3, the department shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963; amd. Sec. 14, Ch. 216, L. 1971; amd. Sec. 37, Ch. 391, L. 1973; R.C.M. 1947, 67-2224.

70-9-316. Penalties. (1) Any person who willfully fails to render any report or perform other duties required under parts 1 through 3 shall be punished by a fine of $50 for each day such report is withheld, but not more than $1,000.

(2) Any person who willfully refuses to pay or deliver abandoned property to the department as required under parts 1 through 3 shall be punished by a fine of not less than $100 or more than $1,000 or imprisonment for not more than 6 months, or both, in the discretion of the court.

(3) A person who fails to pay or deliver property within the time prescribed in parts 1 through 3 may be required to pay to the department interest at the rate of 1% a month or fraction thereof on the property or value thereof from the date the property should have been paid or delivered until it is paid or delivered.

History: En. Sec. 25, Ch. 244, L. 1963; amd. Sec. 15, Ch. 216, L. 1971; amd. Sec. 38, Ch. 391, L. 1973; R.C.M. 1947, 67-2225; amd. Sec. 10, Ch. 269, L. 1983.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101(36).

Interstate agreements and joint and reciprocal actions with other states, 70-9-121, 70-9-122.

Part 4

Common Carriers, Commission Merchants, and Warehousemen

70-9-401. Applicability — Uniform Commercial Code. The provisions of this part apply only to the extent not otherwise provided for in the Uniform Commercial Code.

History: En. 20-314 by Sec. 11-116, Ch. 264, L. 1963; R.C.M. 1947, 20-314.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

Uniform Commercial Code — warehouse receipts, bills of lading, and other documents of title, Title 30, ch. 7.

70-9-402. Storage of unclaimed property. When any goods, merchandise, or other property has been received by any railroad or express company or other common carrier, commission merchants, or warehousemen for transportation or safekeeping and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or warehouseman may hold or store the same with some responsible person until the freight and all just and reasonable charges are paid.

History: En. Sec. 2920, Pol. C. 1895; re-en. Sec. 2003, Rev. C. 1907; re-en. Sec. 7667, R.C.M. 1921; Cal. Pol. C. Sec. 3152; re-en. Sec. 7667, R.C.M. 1935; R.C.M. 1947, 20-308.

70-9-403. Property unclaimed within 90 days to be sold — notice — surplus. (1) If no person calls for the property within 90 days from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, or warehouseman may sell such property or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given 20 days' notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper 10 days (or if in a weekly paper, 4 weeks), published where such sale is to take place.

(2) If any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor or within 60 days after the sale.

History: En. Sec. 2921, Pol. C. 1895; re-en. Sec. 2004, Rev. C. 1907; re-en. Sec. 7668, R.C.M. 1921; Cal. Pol. C. Sec. 3153; re-en. Sec. 7668, R.C.M. 1935; R.C.M. 1947, 20-309.

70-9-404. Surplus proceeds unclaimed — disposition. If the owner or his agent fails to demand such surplus within 60 days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

History: En. Sec. 2922, Pol. C. 1895; re-en. Sec. 2005, Rev. C. 1907; re-en. Sec. 7669, R.C.M. 1921; Cal. Pol. C. Sec. 3154; re-en. Sec. 7669, R.C.M. 1935; R.C.M. 1947, 20-310.

70-9-405. Responsibility of carrier and bailee after storage. After the storage of goods, merchandise, or property as provided in this part, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof unless the same results from his negligence or want of proper care.

History: En. Sec. 2923, Pol. C. 1895; re-en. Sec. 2006, Rev. C. 1907; re-en. Sec. 7670, R.C.M. 1921; Cal. Pol. Sec. 3155; re-en. Sec. 7670, R.C.M. 1935; R.C.M. 1947, 20-311.

70-9-406. Sale of property upon which advances are due. When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property and makes advances thereon, either to the owner or for freight and charges, he may, if the same is not paid to him within 90 days from the date of such advances, cause the produce, merchandise, or property on which the advances were made to be advertised and sold as provided in this part.

History: En. Sec. 2924, Pol. C. 1895; re-en. Sec. 2007, Rev. C. 1907; re-en. Sec. 7671, R.C.M. 1921; Cal. Pol. C. Sec. 3156; re-en. Sec. 7671, R.C.M. 1935; R.C.M. 1947, 20-312.

70-9-407. Fees of officers. The fees of officers under this part are the same as allowed for similar services in other cases provided in this code to be paid by the taker-up or finder and recovered of the owner.

History: En. Sec. 2925, Pol. C. 1895; re-en. Sec. 2008, Rev. C. 1907; re-en. Sec. 7672, R.C.M. 1921; Cal. Pol. C. Sec. 3157; re-en. Sec. 7672, R.C.M. 1935; R.C.M. 1947, 20-313.

Part 5

Innkeepers

Part Cross-References

Performance to one of several joint creditors, 28-1-1103.

70-9-501. Sale of unclaimed baggage — notice. (1) Whenever any trunk, carpetbag, valise, box, bundle, or other baggage comes into the possession of the keeper of any hotel, inn, boardinghouse, or lodginghouse, as such, and remains unclaimed for the period of 6 months, such keeper may proceed to sell the same at public auction and out of the proceeds of such sale may retain the charges for storage, if any, and the expense of advertising and sale thereof.

(2) But no such sale shall be made until the expiration of 4 weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boardinghouse, or lodginghouse is situated.

(3) Said notice shall be published once a week for 4 successive weeks in some newspaper, daily or weekly, of general circulation and shall contain:

(a) a description of each trunk, carpetbag, valise, box, bundle, or other baggage, as near as may be;

(b) the name of the owner, if known;

(c) the name of said keeper and the time and place of sale.

(4) The expenses incurred for advertising shall be a lien upon such trunk, carpetbag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property or thing or article sold.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

70-9-502. Disposition of surplus proceeds. In case any balance arising from such sale shall not be claimed by the rightful owner within 1 week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place, and if the same be not claimed by the owner thereof or his legal representatives within 1 year thereafter, the same shall be paid into the general fund of said county.

History: En. Sec. 2503, Civ. C. 1895; re-en. Sec. 5167, Rev. C. 1907; re-en. Sec. 7676, R.C.M. 1921; Cal. Civ. C. Sec. 1862; re-en. Sec. 7676, R.C.M. 1935; R.C.M. 1947, 34-104(part).

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

DEFINITIONS AND KINDS OF ESTATES IN REAL PROPERTY

Part 1 — Real Property Defined Fixtures and Appurtenances

70-15-101. Real property defined.
70-15-102. Land defined.
70-15-103. Fixture defined.
70-15-104. Fixtures attached to mines.
70-15-105. Incident or appurtenance defined.

Part 2 — Classification of Interests in Real Property

70-15-201. Application of classifications.
70-15-202. Enumeration of estates.
70-15-203. Fee simple.
70-15-204. Estates tail abolished — considered fee simple.
70-15-205. Remainder limited upon fee tail valid — vesting.
70-15-206. Freehold estates — chattels real — chattel interests.
70-15-207. Estate for life of third person — freehold.
70-15-208. Term of years — suspension of absolute ownership.
70-15-209. Future estate — right of possession at future day.
70-15-210. Reversion.
70-15-211. Remainder.
70-15-212. Future and contingent estates — how created.
70-15-213. Remainder upon a contingency.
70-15-214. Remainder not upon a contingency — when to take effect.
70-15-215. Remainder to heirs of tenant for life — effect of.
70-15-216. When vesting of future estate not prevented by power of appointment.

Part 3 — Powers

70-15-301. Power defined.
70-15-302. Who may not execute power.
70-15-303. Married persons — execution.
70-15-304. Power — how executed.

Part 1

Real Property Defined
Fixtures and Appurtenances

70-15-101. Real property defined. Real or immovable property consists of:

(1) land;
(2) that which is affixed to land;
(3) that which is incidental or appurtenant to land;
(4) that which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R.C.M. 1921; Cal. Civ. C. Sec. 658; Based on Field Civ. C. Sec. 163; re-en. Sec. 6667, R.C.M. 1935; R.C.M. 1947, 67-207.

Cross-References

Real estate defined, 37-51-102, 37-53-102.

70-15-102. Land defined. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

History: En. Sec. 1075, Civ. C. 1895; re-en. Sec. 4426, Rev. C. 1907; re-en. Sec. 6668, R.C.M. 1921; Cal. Civ. C. Sec. 659; Field Civ. C. Sec. 164; re-en. Sec. 6668, R.C.M. 1935; R.C.M. 1947, 67-208.

70-15-103. Fixture defined. A thing is deemed to be affixed to land when it is:

(1) attached to it by roots, as in the case of trees, vines, or shrubs;
(2) imbedded in it, as in the case of walls;
(3) permanently resting upon it, as in the case of buildings; or
(4) permanently attached to what is thus permanent as by means of cement, plaster, nails, bolts, or screws.

History: En. Sec. 1076, Civ. C. 1895; re-en. Sec. 4427, Rev. C. 1907; re-en. Sec. 6669, R.C.M. 1921; Cal. Civ. C. Sec. 660; Field Civ. C. Sec. 165; re-en. Sec. 6669, R.C.M. 1935; R.C.M. 1947, 67-209.

70-15-104. Fixtures attached to mines. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine.

History: En. Sec. 1077, Civ. C. 1895; re-en. Sec. 4428, Rev. C. 1907; re-en. Sec. 6670, R.C.M. 1921; Cal. Civ. C. Sec. 661; re-en. Sec. 6670, R.C.M. 1935; R.C.M. 1947, 67-210.

70-15-105. Incident or appurtenance defined. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way or watercourse or of a passage for light, air, or heat from or across the land of another.

History: En. Sec. 1078, Civ. C. 1895; re-en. Sec. 4429, Rev. C. 1907; re-en. Sec. 6671, R.C.M. 1921; Cal. Civ. C. Sec. 662; Field Civ. C. Sec. 166; re-en. Sec. 6671, R.C.M. 1935; R.C.M. 1947, 67-211.

Part 2

Classification of Interests in Real Property

Part Cross-References
Trust code, Title 72, ch. 33 through 36.

70-15-201. Application of classifications. The names and classification of interests in real property have only such application to interests in personal property as is in this code expressly provided.

History: En. Sec. 1123, Civ. C. 1895; re-en. Sec. 4456, Rev. C. 1907; re-en. Sec. 6698, R.C.M. 1921; Cal. Civ. C. Sec. 702; Field Civ. C. Sec. 194; re-en. Sec. 6698, R.C.M. 1935; R.C.M. 1947, 67-328.

70-15-202. Enumeration of estates. Estates in real property, in respect to the duration of their enjoyment, are either:

(1) estates of inheritance or perpetual estates;

(2) estates for life;

(3) estates for years;

(4) estates from year to year, quarter to quarter, month to month, week to week, day to day, and for other indefinite and unascertained durations of enjoyment whatsoever, except estates or tenancies at will; or

(5) estates at will.

History: En. Sec. 1210, Civ. C. 1895; re-en. Sec. 4481, Rev. C. 1907; re-en. Sec. 6723, R.C.M. 1921; Cal. Civ. C. Sec. 761; Field Civ. C. Sec. 218; amd. Sec. 1, Ch. 48, L. 1931; re-en. Sec. 6723, R.C.M. 1935; R.C.M. 1947, 67-502.

Cross-References
Quieting title to real property, Title 70, ch. 28.

70-15-203. Fee simple. Every estate of inheritance is a fee, and such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

History: En. Sec. 1211, Civ. C. 1895; re-en. Sec. 4482, Rev. C. 1907; re-en. Sec. 6724, R.C.M. 1921; Cal. Civ. C. Sec. 762; Based on Field Civ. Sec. 219; re-en. Sec. 6724, R.C.M. 1935; R.C.M. 1947, 67-503.

70-15-204. Estates tail abolished — considered fee simple. Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple and, if no valid remainder is limited thereon, is a fee simple absolute.

History: En. Sec. 1212, Civ. C. 1895; re-en. Sec. 4483, Rev. C. 1907; re-en. Sec. 6725, R.C.M. 1921; Cal. Civ. C. Sec. 763; Based on Field Civ. C. Sec. 220; re-en. Sec. 6725, R.C.M. 1935; R.C.M. 1947, 67-504.

70-15-205. Remainder limited upon fee tail valid — vesting. Where a remainder in fee is limited upon any estate which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of his death.

History: En. Sec. 1213, Civ. C. 1895; re-en. Sec. 4484, Rev. C. 1907; re-en. Sec. 6726, R.C.M. 1921; Cal. Civ. C. Sec. 764; Based on Field Civ. C. Sec. 221; re-en. Sec. 6726, R.C.M. 1935; R.C.M. 1947, 67-505.

70-15-206. Freehold estates — chattels real — chattel interests. Estates of inheritance and for life are called estates of freehold; estates for years and estates embraced by the provisions of 70-15-202(4) are chattels real; and estates at will are chattel interests but are not liable as such to sale on execution.

History: En. Sec. 1214, Civ. C. 1895; re-en. Sec. 4485, Rev. C. 1907; re-en. Sec. 6727, R.C.M. 1921; Cal. Civ. C. Sec. 765; Field Civ. C. Sec. 222; amd. Sec. 1, Ch. 49, L. 1931; re-en. Sec. 6727, R.C.M. 1935; R.C.M. 1947, 67-506.

70-15-207. Estate for life of third person — freehold. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

History: En. Sec. 1215, Civ. C. 1895; re-en. Sec. 4486, Rev. C. 1907; re-en. Sec. 6728, R.C.M. 1921; Cal. Civ. C. Sec. 766; re-en. Sec. 6728, R.C.M. 1935; R.C.M. 1947, 67-507.

70-15-208. Term of years — suspension of absolute ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

History: En. Sec. 1219, Civ. C. 1895; re-en. Sec. 4490, Rev. C. 1907; re-en. Sec. 6732, R.C.M. 1921; Cal. Civ. C. Sec. 770; re-en. Sec. 6732, R.C.M. 1935; R.C.M. 1947, 67-511.

Cross-References

Conditions and limitations of ownership, Title 70, ch. 1, part 4.

70-15-209. Future estate — right of possession at future day. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate or on the termination by lapse of time or otherwise of a precedent estate created at the same time.

History: En. Sec. 1216, Civ. C. 1895; re-en. Sec. 4487, Rev. C. 1907; re-en. Sec. 6729, R.C.M. 1921; Cal. Civ. C. Sec. 767; Field Civ. C. Sec. 224; re-en. Sec. 6729, R.C.M. 1935; R.C.M. 1947, 67-508.

Cross-References

Future interest — to what entitles owner, 70-1-317.

70-15-210. Reversion. A reversion is the residue of an estate left by operation of law in the grantor or his successors or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

History: En. Sec. 1217, Civ. C. 1895; re-en. Sec. 4488, Rev. C. 1907; re-en. Sec. 6730, R.C.M. 1921; Cal. Civ. C. Sec. 768; Field Civ. C. Sec. 225; re-en. Sec. 6730, R.C.M. 1935; R.C.M. 1947, 67-509.

70-15-211. Remainder. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder and may be created and transferred by that name.

History: En. Sec. 1218, Civ. C. 1895; re-en. Sec. 4489, Rev. C. 1907; re-en. Sec. 6731, R.C.M. 1921; Cal. Civ. C. Sec. 769; Field Civ. C. Sec. 226; re-en. Sec. 6731, R.C.M. 1935; R.C.M. 1947, 67-510.

70-15-212. Future and contingent estates — how created. Subject to the rules of parts 1, 3, and 4 of chapter 1, parts 1 and 2 of this chapter, and part 1 of chapter 17:

(1) a freehold estate, as well as a chattel real, may be created to commence at a future day;

(2) an estate for life may be created in a term of years and a remainder limited thereon;

(3) a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and

(4) a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this code.

History: En. Sec. 1222, Civ. C. 1895; re-en. Sec. 4493, Rev. C. 1907; re-en. Sec. 6735, R.C.M. 1921; Cal. Civ. C. Sec. 773; Field Civ. C. Sec. 230; re-en. Sec. 6735, R.C.M. 1935; R.C.M. 1947, 67-514.

70-15-213. Remainder upon a contingency. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate, and every such remainder is to be deemed a conditional limitation.

History: En. Sec. 1227, Civ. C. 1895; re-en. Sec. 4498, Rev. C. 1907; re-en. Sec. 6740, R.C.M. 1921; Cal. Civ. C. Sec. 778; Field Civ. C. Sec. 236; re-en. Sec. 6740, R.C.M. 1935; R.C.M. 1947, 67-519.

70-15-214. Remainder not upon a contingency — when to take effect. When a remainder of an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years.

History: En. Sec. 1229, Civ. C. 1895; re-en. Sec. 4500, Rev. C. 1907; re-en. Sec. 6742, R.C.M. 1921; Cal. Civ. C. Sec. 780; Field Civ. C. Sec. 238; re-en. Sec. 6742, R.C.M. 1935; R.C.M. 1947, 67-521.

70-15-215. Remainder to heirs of tenant for life — effect of. When a remainder is limited to the heirs or heirs of the body of a person to whom a life estate in the same property is given, the persons who on the termination of the life estate are the successors or heirs of the body of the owner for life are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life.

History: En. Sec. 1228, Civ. C. 1895; re-en. Sec. 4499, Rev. C. 1907; re-en. Sec. 6741, R.C.M. 1921; Cal. Civ. C. Sec. 779; Field Civ. C. Sec. 237; re-en. Sec. 6741, R.C.M. 1935; R.C.M. 1947, 67-520.

70-15-216. When vesting of future estate not prevented by power of appointment. A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

History: En. Sec. 1230, Civ. C. 1895; re-en. Sec. 4501, Rev. C. 1907; re-en. Sec. 6743, R.C.M. 1921; Cal. Civ. C. Sec. 781; Field Civ. C. Sec. 239; re-en. Sec. 6743, R.C.M. 1935; R.C.M. 1947, 67-522.

Part 3

Powers

70-15-301. Power defined. A "power", as the term is used in this part, is an authority to do some act in relation to real property or to the creation or revocation of an estate therein or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

History: En. Sec. 1330, Civ. C. 1895; re-en. Sec. 4551, Rev. C. 1907; re-en. Sec. 6798, R.C.M. 1921; Field Civ. C. Sec. 302; re-en. Sec. 6798, R.C.M. 1935; R.C.M. 1947, 67-901.

70-15-302. Who may not execute power. A power cannot be executed by any person not capable of disposing of real property.

History: En. Sec. 1331, Civ. C. 1895; re-en. Sec. 4552, Rev. C. 1907; re-en. Sec. 6799, R.C.M. 1921; Field Civ. C. Sec. 319; re-en. Sec. 6799, R.C.M. 1935; R.C.M. 1947, 67-902.

70-15-303. Married persons -- execution. (1) A married person may execute a power during marriage without the concurrence of the spouse unless otherwise prescribed by the terms of the power.

(2) No power can be executed by a married woman before she attains her majority which could not be executed by a married man before he attains his majority.

History: (1)En. Sec. 1332, Civ. C. 1895; re-en. Sec. 4553, Rev. C. 1907; re-en. Sec. 6800, R.C.M. 1921; Field Civ. C. Sec. 320; re-en. Sec. 6800, R.C.M. 1935; amd. Sec. 31, Ch. 535, L. 1975; Sec. 67-903, R.C.M. 1947; (2)En. Sec. 1333, Civ. C. 1895; re-en. Sec. 4554, Rev. C. 1907; re-en. Sec. 6801, R.C.M. 1921; Based on Field Civ. C. Sec. 321; re-en. Sec. 6801, R.C.M. 1935; amd. Sec. 32, Ch. 535, L. 1975; Sec. 67-904, R.C.M. 1947; R.C.M. 1947, 67-903, 67-904.

70-15-304. Power — how executed. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power if the person executing the power were the actual owner.

History: En. Sec. 1334, Civ. C. 1895; re-en. Sec. 4555, Rev. C. 1907; re-en. Sec. 6802, R.C.M. 1921; Field Civ. C. Sec. 322; re-en. Sec. 6802, R.C.M. 1935; R.C.M. 1947, 67-905.

Cross-References

What contracts must be in writing, 28-2-903.

CHAPTER 16

RIGHTS AND OBLIGATIONS INCIDENTAL TO OWNERSHIP IN REAL PROPERTY

Part 1 — General Provisions

70-16-101. Rights of owner in fee — above and below surface.

70-16-102. Rights of life tenant.
70-16-103. Duties of life tenant.
70-16-104. Rights of tenant for years or at will.
70-16-105. Remedy of remainderman or reversioner.
70-16-106. Action for waste — treble damages.
70-16-107. Trespass for taking timber.
70-16-108. Injury to timber — exceptions as to treble damages.
70-16-109. Summary proceedings for possession — where provisions found.

Part 2 — Adjoining Landowners and Boundaries—Fences

70-16-201. Owner of land bounded by water.
70-16-202. Owner of land bounded by road.
70-16-203. Adjoining owner's right to lateral and subjacent support — excavations.
70-16-204. Trees on or near boundary.
70-16-205. Monuments and fences — mutual obligation of adjoining owners.
70-16-206. Partition fences required — adjoining lands previously enclosed.
70-16-207. Occupant of land adjoining enclosure of another — when required to share expense of partition fence.
70-16-208. Partition fence when common occupancy ceases.
70-16-209. Repair or rebuilding of partition fences.
70-16-210. Removal of partition fence.

Part 3 — Gratuitous Permittee for Recreation

70-16-301. Recreational purposes defined.
70-16-302. Restriction on liability of landowner or his agent or tenant.

Part 4 — Right of Reentry

70-16-401. Reentry — when and how to be made.
70-16-402. Action for possession under right of reentry — notice not required.

Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Part 1

General Provisions

70-16-101. Rights of owner in fee — above and below surface. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

History: En. Sec. 1290, Civ. C. 1895; re-en. Sec. 4528, Rev. C. 1907; re-en. Sec. 6770, R.C.M. 1921; Cal. Civ. C. Sec. 829; Field Civ. C. Sec. 266; re-en. Sec. 6770, R.C.M. 1935; R.C.M. 1947, 67-711.

70-16-102. Rights of life tenant. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

History: En. Sec. 1270, Civ. C. 1895; re-en. Sec. 4518, Rev. C. 1907; re-en. Sec. 6760, R.C.M. 1921; Cal. C. Sec. 818; Field Civ. C. Sec. 257; re-en. Sec. 6760, R.C.M. 1935; R.C.M. 1947, 67-701.

70-16-103. Duties of life tenant. The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance.

History: En. Sec. 1300, Civ. C. 1895; re-en. Sec. 4534, Rev. C. 1907; re-en. Sec. 6776, R.C.M. 1921; Cal. Civ. C. Sec. 840; Field Civ. C. Sec. 272; re-en. Sec. 6776, R.C.M. 1935; R.C.M. 1947, 67-801.

70-16-104. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 5, Ch. 115, L. 1979.

Cross-References

Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

Landlord and tenant — supplementary provisions, Title 70, ch. 26.

Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

70-16-105. Remedy of remainderman or reversioner. A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years and although, after its commission, his estate is transferred and he has no interest in the property at the commencement of the action.

History: En. Sec. 1278, Civ. C. 1895; re-en. Sec. 4526, Rev. C. 1907; re-en. Sec. 6768, R.C.M. 1921; Cal. Civ. C. Sec. 826; Field Civ. C. Sec. 265; re-en. Sec. 6768, R.C.M. 1935; R.C.M. 1947, 67-709.

70-16-106. Action for waste — treble damages. If a guardian, tenant for life or years, joint tenant, or tenant in common of real property commits waste thereon, any person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

History: En. Sec. 229, p. 91, Bannack Stat.; re-en. Sec. 250, p. 187, L. 1867; re-en. Sec. 299, p. 93, Cod. Stat. 1871; re-en. Sec. 350, p. 137, L. 1877; re-en. Sec. 350, 1st Div. Rev. Stat. 1879; re-en. Sec. 362, 1st Div. Comp. Stat. 1887; re-en. Sec. 1301, C. Civ. Proc. 1895; re-en. Sec. 6866, Rev. C. 1907; re-en. Sec. 9475, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 732; re-en. Sec. 9475, R.C.M. 1935; R.C.M. 1947, 93-6102.

Cross-References

Statutes of Limitation, Title 27, ch. 2, part 2.

Action by or against joint tenants or tenants in common, 70-1-310.

Abuse of property held jointly or in common — mining property, 70-1-311, 70-19-202.

70-16-107. Trespass for taking timber. (1) Any person who cuts down or carries off any wood or underwood, tree, or timber or girdles or otherwise injures any tree or timber on the land of another person or on the street or highway in front of any person's house, village or city lot, or cultivated grounds or on the commons or public grounds of any city or town or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land or to such city or town for treble the amount of damages which may be assessed therefor in a civil action in any court having jurisdiction.

(2) Nothing in subsection (1) authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land or adjoining it.

History: (1)En. Sec. 230, p. 91, Bannack Stat.; re-en. Sec. 251, p. 187, L. 1867; re-en. Sec. 300, p. 93, Cod. Stat. 1871; re-en. Sec. 351, p. 137, L. 1877; re-en. Sec. 351, 1st Div. Rev. Stat. 1879; re-en. Sec. 363, 1st Div. Comp. Stat. 1887; re-en. Sec. 1302, C. Civ. Proc. 1895; re-en. Sec. 6867, Rev. C. 1907; re-en. Sec. 9476, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 733; re-en. Sec. 9476, R.C.M. 1935; Sec. 93-6103, R.C.M. 1947; (2)En. Sec. 231, p. 91, Bannack Stat.; re-en. Sec. 252, p. 187, L. 1867; re-en. Sec. 301, p. 93, Cod. Stat. 1871; re-en. Sec. 352, p. 137, L. 1877; re-en. Sec. 352, 1st Div. Rev. Stat. 1879; re-en. Sec. 364, 1st Div. Comp. Stat. 1887; re-en. Sec. 1303, C. Civ. Proc. 1895; re-en. Sec. 6868, Rev. C. 1907; re-en. Sec. 9477, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 734; re-en. Sec. 9477, R.C.M. 1935; Sec. 93-6104, R.C.M. 1947; R.C.M. 1947, 93-6103, 93-6104.

70-16-108. Injury to timber — exceptions as to treble damages. For wrongful injuries to timber, trees, or underwood upon the land of another or removal thereof, the measure of damage is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary or committed under the belief that the land belonged to the trespasser or where the wood was taken by the authority of highway officers for the purposes of a highway, in which cases the damages are a sum equal to the actual detriment.

History: En. Sec. 4352, Civ. C. 1895; re-en. Sec. 6078, Rev. C. 1907; re-en. Sec. 8696, R.C.M. 1921; Cal. Civ. C. Sec. 3346; Field. Civ. C. Sec. 1871; re-en. Sec. 8696, R.C.M. 1935; R.C.M. 1947, 17-503.

70-16-109. Summary proceedings for possession — where provisions found. Summary proceedings for obtaining possession of real property forcibly entered or forcibly and unlawfully detained are provided for in chapter 27.

History: En. Sec. 1243, Civ. C. 1895; re-en. Sec. 4505, Rev. C. 1907; re-en. Sec. 6747, R.C.M. 1921; Cal. Civ. C. Sec. 792; re-en. Sec. 6747, R.C.M. 1935; R.C.M. 1947, 67-526.

Cross-References

Wrongful occupation of real property, 27-1-318.

Part 2

Adjoining Landowners and Boundaries — Fences

70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

History: En. Sec. 1291, Civ. C. 1895; re-en. Sec. 4529, Rev. C. 1907; re-en. Sec. 6771, R.C.M. 1921; Cal. Civ. C. Sec. 830; Based on Field Civ. C. Sec. 267; re-en. Sec. 6771, R.C.M. 1935; R.C.M. 1947, 67-712.

Cross-References

Water rights, Art. IX, sec. 3, Mont. Const.

Recreational use of streams, Title 23, ch. 2, part 3.

Public ways, 85-1-111.

Navigable waters, 85-1-112.

70-16-202. Owner of land bounded by road. An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

History: En. Sec. 1292, Civ. C. 1895; re-en. Sec. 4530, Rev. C. 1907; re-en. Sec. 6772, R.C.M. 1921; Cal. Civ. C. Sec. 831; Field Civ. C. Sec. 268; re-en. Sec. 6772, R.C.M. 1935; R.C.M. 1947, 67-713.

70-16-203. Adjoining owner's right to lateral and subjacent support — excavations. Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for the purposes of construction, on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of his intention to make such excavations.

History: En. Sec. 1293, Civ. C. 1895; re-en. Sec. 4531, Rev. C. 1907; re-en. Sec. 6773, R.C.M. 1921; Cal. Civ. C. Sec. 832; Based on Field Civ. C. Sec. 269; re-en. Sec. 6773, R.C.M. 1935; R.C.M. 1947, 67-714.

70-16-204. Trees on or near boundary. (1) Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

(2) Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

History: En. Secs. 1294, 1295, Civ. C. 1895; re-en. Secs. 4532, 4533, Rev. C. 1907; re-en. Secs. 6774, 6775, R.C.M. 1921; Cal. Civ. C. Secs. 833, 834; Field Civ. C. Secs. 270, 271; re-en. Secs. 6774, 6775, R.C.M. 1935; R.C.M. 1947, 67-715, 67-716.

70-16-205. Monuments and fences — mutual obligation of adjoining owners. (1) Coterminous owners are mutually bound equally to maintain:

(a) the boundaries and monuments between them;

(b) the fences between them, unless one of them chooses to let his land lie without fencing, in which case if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter. However, using land for grazing or pasturage of any kind whatsoever must be considered a usage of the land, and the land must not be considered as lying idle under the provisions of this section.

(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from his land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from his land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time.

History: En. Sec. 1301, Civ. C. 1895; re-en. Sec. 4535, Rev. C. 1907; amd. Sec. 1, Ch. 132, L. 1917; re-en. Sec. 6777, R.C.M. 1921; Cal. Civ. C. Sec. 841; Based on Field Civ. C. Sec. 273; re-en. Sec. 6777, R.C.M. 1935; R.C.M. 1947, 67-802; amd. Sec. 1, Ch. 402, L. 1989.

70-16-206. Partition fences required — adjoining lands previously enclosed. The occupants of adjoining lands enclosed with fences must build and maintain partition fences between their own and the next adjoining enclosure in equal shares so long as both continue to enclose the same, and such partition fence must be kept in good repair throughout the year unless the occupants otherwise mutually agree.

History: En. Sec. 1114, 5th Div. Comp. Stat. 1887; amd. Sec. 3253, Pol. C. 1895; re-en. Sec. 2085, Rev. C. 1907; re-en. Sec. 6778, R.C.M. 1921; re-en. Sec. 6778, R.C.M. 1935; R.C.M. 1947, 67-803.

70-16-207. Occupant of land adjoining enclosure of another — when required to share expense of partition fence. If any occupant of land adjoining the enclosure of another enclose the same, upon the enclosure of such other person, he must within 3 months thereafter build his proportion of such partition fence or refund to the owner thereof an equal proportion of the value, at that time, of any partition fence of such adjoining occupant.

History: En. Sec. 1115, 5th Div. Comp. Stat. 1887; re-en. Sec. 3254, Pol. C. 1895; re-en. Sec. 2086, Rev. C. 1907; re-en. Sec. 6779, R.C.M. 1921; re-en. Sec. 6779, R.C.M. 1935; R.C.M. 1947, 67-804.

70-16-208. Partition fence when common occupancy ceases. Whenever any lands belonging to different persons in severalty have been enclosed and occupied in common or without a partition fence between them and one of such occupants desires to occupy his part in severalty, the other occupant must, within 6 months after being notified in writing, build and maintain his proportion of such partition fence as may be necessary for that purpose, and in case of neglect or refusal so to do, the person giving such notice may build such fence at the expense of the person so neglecting or refusing, the amount expended to be recovered in an action, together with all damages he may sustain on account of such neglect or refusal.

History: En. Sec. 1116, 5th Div. Comp. Stat. 1887; re-en. Sec. 3255, Pol. C. 1895; re-en. Sec. 2087, Rev. C. 1907; re-en. Sec. 6780, R.C.M. 1921; re-en. Sec. 6780, R.C.M. 1935; R.C.M. 1947, 67-805.

70-16-209. Repair or rebuilding of partition fences. In case any person neglects or refuses to repair or rebuild any partition fence which by law he ought to build or maintain, the occupant of the adjoining land may, after giving 60 days' notice that a new fence should be erected or 5 days' notice in writing that the repairing of such fence is necessary, build or repair such fence at the expense of the party so neglecting or refusing, the amount so expended to be recovered from him; and the party so neglecting or refusing, after receipt by him of the notice above provided, is liable to the party injured for all damages he may sustain thereby.

History: En. Sec. 1118, 5th Div. Comp. Stat. 1887; re-en. Sec. 3257, Pol. C. 1895; re-en. Sec. 2089, Rev. C. 1907; re-en. Sec. 6782, R.C.M. 1921; re-en. Sec. 6782, R.C.M. 1935; R.C.M. 1947, 67-807.

70-16-210. Removal of partition fence. If the occupants of adjoining lands build their respective portions of a partition fence and either of them at any time desires to suffer the land occupied by him to lie open, he may, after having given to the occupants of the adjoining land at least 6 months' notice of his intention so to do, remove his proportion of the partition fence unless such adjoining occupant pays or tenders to him the value thereof. If such fence be removed without notice or after payment or tender of the value as aforesaid, the person removing the same is liable to the person injured for all damages he may sustain thereby.

History: En. Sec. 1117, 5th Div. Comp. Stat. 1887; re-en. Sec. 3256, Pol. C. 1895; re-en. Sec. 2088, Rev. C. 1907; re-en. Sec. 6781, R.C.M. 1921; re-en. Sec. 6781, R.C.M. 1935; R.C.M. 1947, 67-806.

Part 3

Gratuitous Permittee for Recreation

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Limitation on landowner liability to recreationists, 23-2-321.

Smith River Management Act, Title 23, ch. 2, part 4.

Liability, Title 27, ch. 1, part 7.

70-16-301. Recreational purposes defined. "Recreational purposes", as used herein, shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965; R.C.M. 1947, 67-809; amd. Sec. 1, Ch. 531, L. 1987.

Cross-References

"Recreational use" defined, 23-2-301.

70-16-302. Restriction on liability of landowner or his agent or tenant. (1) A person who makes recreational use of any property in the possession or under the control of another, with or without permission and without giving a valuable consideration therefor, does so without any assurance from the landowner, his agent, or his tenant that the property is safe for any purpose. The landowner, his agent, or his tenant owes the person no duty of care with respect to the condition of the property, except that the landowner, his agent, or his tenant is liable to such person for any injury to person or property for an act or omission that constitutes willful or wanton misconduct.

(2) The department of fish, wildlife, and parks, when operating under an agreement with a landowner or tenant to provide recreational snowmobiling opportunities, including but not limited to a snowmobile area, subject to the provisions of subsection (1), on the landowner's property and when not also acting as a snowmobile area operator on the property, does not extend any assurance that such property is safe for any purpose, and the department, the landowner, or the landowner's tenant may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless such act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965; R.C.M. 1947, 67-808; amd. Sec. 3, Ch. 209, L. 1987; amd. Sec. 8, Ch. 440, L. 1987.

Cross-References

Responsibility and liability of snowmobile area operators, 23-2-651 through 23-2-656.

Part 4

Right of Reentry

70-16-401. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in chapter 27.

History: En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.

Cross-References

Forcible entry and detainer — unlawful detainer, Title 70, ch. 27.

70-16-402. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-16-401.

History: En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.

CHAPTER 17

SERVITUDES, EASEMENTS, AND COVENANTS RUNNING WITH THE LAND

Part 1 — Servitudes—Easements

70-17-101. Servitudes attached to land.
70-17-102. Servitudes not attached to land.
70-17-103. Dominant and servient tenement.
70-17-104. Who may grant servitude.
70-17-105. Who may not hold servitude.
70-17-106. Extent of servitude.
70-17-107. Apportionment of burden upon partition of dominant tenement.
70-17-108. Rights of owner of future estate in dominant tenement.
70-17-109. Who may bring action to enforce easement.
70-17-110. Action by owner of servient tenement for possession.
70-17-111. How servitude extinguished.
70-17-112. Interference with canal or ditch easements prohibited.

Part 2 — Covenants Running With the Land

70-17-201. Nature and effect.
70-17-202. Covenants specified in this part as exclusive.
70-17-203. What covenants run with the land.
70-17-204. Who bound by covenant.
70-17-205. Nonliability for prior or subsequent breach.
70-17-206. Apportionment of burdens and benefits.

Part 3 — Solar and Wind Energy Easements

70-17-301. Creation of solar easements.
70-17-302. Content of solar easements.
70-17-303. Wind energy easement.

Part 1

Servitudes — Easements

Part Cross-References

Implied covenants, 70-20-304.

Easements to pass with property, 70-20-308.

Trust code, Title 72, ch. 33 through 36.

70-17-101. Servitudes attached to land. The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances and are then called easements:

(1) the right of pasture;
(2) the right of fishing;
(3) the right of taking game;
(4) the right-of-way;

(5) the right of taking water, wood, minerals, and other things;
(6) the right of transacting business upon land;
(7) the right of conducting lawful sports upon land;
(8) the right of receiving air, light, or heat from or over or discharging the same upon or over land;
(9) the right of receiving water from or discharging the same upon land;
(10) the right of flooding land;
(11) the right of having water flow without diminution or disturbance of any kind;
(12) the right of using a wall as a party wall;
(13) the right of receiving more than natural support from adjacent land or things affixed thereto;
(14) the right of having the whole of a division fence maintained by a coterminous owner;
(15) the right of having public conveyances stopped or of stopping the same on land;
(16) the right of a seat in church;
(17) the right of burial;
(18) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land;
(19) the right of receiving sunlight or wind for recognized nonfossil forms of energy generation.

History: En. Sec. 1250, Civ. C. 1895; re-en. Sec. 4507, Rev. C. 1907; re-en. Sec. 6749, R.C.M. 1921; Cal. Civ. C. Sec. 801; Field Civ. C. Sec. 245; re-en. Sec. 6749, R.C.M. 1935; amd. Sec. 16, Ch. 489, L. 1975; R.C.M. 1947, 67-601; amd. Sec. 1, Ch. 209, L. 1983.

Cross-References

Covenants running with the land, Title 70, ch. 17, part 2.

70-17-102. Servitudes not attached to land. The following land burdens or servitudes upon land may be granted and held though not attached to land:
(1) the right of pasture and of fishing and taking game;
(2) the right of a seat in church;
(3) the right of burial;
(4) the right of taking rents and tolls;
(5) the right-of-way;
(6) the right of taking water, wood, minerals, or other things;
(7) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land.

History: En. Sec. 1251, Civ. C. 1895; re-en. Sec. 4508, Rev. C. 1907; re-en. Sec. 6750, R.C.M. 1921; Cal. Civ. C. Sec. 802; Based on Field Civ. C. Sec. 246; re-en. Sec. 6750, R.C.M. 1935; amd. Sec. 17, Ch. 489, L. 1975; R.C.M. 1947, 67-602.

70-17-103. Dominant and servient tenement. The land to which an easement is attached is called the dominant tenement. The land upon which a burden or servitude is held is called the servient tenement.

History: En. Sec. 1252, Civ. C. 1895; re-en. Sec. 4509, Rev. C. 1907; re-en. Sec. 6751, R.C.M. 1921; Cal. Civ. C. Sec. 803; Field Civ. C. Sec. 247; re-en. Sec. 6751, R.C.M. 1935; R.C.M. 1947, 67-603.

70-17-104. Who may grant servitude. A servitude can be created only by one who has a vested estate in the servient tenement.

History: En. Sec. 1253, Civ. C. 1895; re-en. Sec. 4510, Rev. C. 1907; re-en. Sec. 6752, R.C.M. 1921; Cal. Civ. C. Sec. 804; Field Civ. C. Sec. 248; re-en. Sec. 6752, R.C.M. 1935; R.C.M. 1947, 67-604.

70-17-105. Who may not hold servitude. A servitude thereon cannot be held by the owner of the servient tenement.

History: En. Sec. 1254, Civ. C. 1895; re-en. Sec. 4511, Rev. C. 1907; re-en. Sec. 6753, R.C.M. 1921; Cal. Civ. C. Sec. 805; Field Civ. C. Sec. 249; re-en. Sec. 6753, R.C.M. 1935; R.C.M. 1947, 67-605.

70-17-106. Extent of servitude. The extent of a servitude is determined by the terms of the grant or the nature of the enjoyment by which it was acquired.

History: En. Sec. 1255, Civ. C. 1895; re-en. Sec. 4512, Rev. C. 1907; re-en. Sec. 6754, R.C.M. 1921; Cal. Civ. C. Sec. 806; Field Civ. C. Sec. 250; re-en. Sec. 6754, R.C.M. 1935; R.C.M. 1947, 67-606.

70-17-107. Apportionment of burden upon partition of dominant tenement. In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement but not in such a way as to increase the burden upon the servient tenement.

History: En. Sec. 1256, Civ. C. 1895; re-en. Sec. 4513, Rev. C. 1907; re-en. Sec. 6755, R.C.M. 1921; Cal. Civ. C. Sec. 807; Field Civ. C. Sec. 251; re-en. Sec. 6755, R.C.M. 1935; R.C.M. 1947, 67-607.

70-17-108. Rights of owner of future estate in dominant tenement. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements although such tenement is occupied by a tenant.

History: En. Sec. 1257, Civ. C. 1895; re-en. Sec. 4514, Rev. C. 1907; re-en. Sec. 6756, R.C.M. 1921; Cal. Civ. C. Sec. 808; Field Civ. C. Sec. 252; re-en. Sec. 6756, R.C.M. 1935; R.C.M. 1947, 67-608.

70-17-109. Who may bring action to enforce easement. The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

History: En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; R.C.M. 1947, 62-617.

70-17-110. Action by owner of servient tenement for possession. The owner in fee of a servient tenement may maintain an action for the possession of the land against any one unlawfully possessed thereof though a servitude exists thereon in favor of the public.

History: En. Sec. 1259, Civ. C. 1895; re-en. Sec. 4516, Rev. C. 1907; re-en. Sec. 6758, R.C.M. 1921; Cal. Civ. C. Sec. 810; Field Civ. C. Sec. 254; re-en. Sec. 6758, R.C.M. 1935; R.C.M. 1947, 67-610.

70-17-111. How servitude extinguished. A servitude is extinguished:

(1) by the vesting of the right to the servitude and the right to the servient tenement in the same person;

(2) by the destruction of the servient tenement;

(3) by the performance of any act upon either tenement by the owner of the servitude or with his assent which is incompatible with its nature or exercise; or

(4) when the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

History: **En. Sec. 1260, Civ. C. 1895; re-en. Sec. 4517, Rev. C. 1907; re-en. Sec. 6759, R.C.M. 1921; Cal. Civ. C. Sec. 811; Field Civ. C. Sec. 255; re-en. Sec. 6759, R.C.M. 1935; R.C.M. 1947, 67-611.**

70-17-112. Interference with canal or ditch easements prohibited. (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.

(2) No person may encroach upon or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water.

(3) The provisions of subsection (2) do not apply if the holder of the canal or ditch easement consents in writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section. Nothing in this section establishes a secondary easement where none existed prior to April 14, 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees.

History: **En. Sec. 1, Ch. 371, L. 1981.**

Cross-References

Obstruction as nuisance, 27-30-101.

Part 2

Covenants Running With the Land

Part Cross-References

Breach of covenants in grants of estates in real property, 27-1-316.

Joint obligations and covenants to be taken as joint and several, 28-1-302.

What included in authority to sell real property, 28-10-422.

Usual common-law covenants required by such contracts, when, 30-11-109.

Form of covenants, 30-11-110.

70-17-201. Nature and effect. Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

History: **En. Sec. 1983, Civ. C. 1895; re-en. Sec. 4914, Rev. C. 1907; re-en. Sec. 7416, R.C.M. 1921; Cal. Civ. C. Sec. 1460; Field Civ. C. Sec. 691; re-en. Sec. 7416, R.C.M. 1935; R.C.M. 1947, 58-304.**

70-17-202. Covenants specified in this part as exclusive. The only covenants which run with the land are those specified in this part and those which are incidental thereto.

History: En. Sec. 1984, Civ. C. 1895; re-en. Sec. 4915, Rev. C. 1907; re-en. Sec. 7417, R.C.M. 1921; Cal. Civ. C. Sec. 1461; Field Civ. C. Sec. 692; re-en. Sec. 7417, R.C.M. 1935; R.C.M. 1947, 58-305.

Cross-References

Easements to run with the land, 76-6-209.

70-17-203. What covenants run with the land. (1) Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property or some part of it then in existence, runs with the land.

(2) Subsection (1) includes covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far as the assigns thus mentioned are concerned.

History: En. Secs. 1985, 1986, 1987, Civ. C. 1895; re-en. Secs. 4916, 4917, 4918, Rev. C. 1907; re-en. Secs. 7418, 7419, 7420, R.C.M. 1921; Cal. Civ. C. Secs. 1462, 1463, 1464; Field Civ. C. Secs. 693, 694, 695; re-en. Secs. 7418, 7419, 7420, R.C.M. 1935; R.C.M. 1947, 58-306, 58-307, 58-308.

Cross-References

Easements to run with the land, 76-6-209.

70-17-204. Who bound by covenant. A covenant running with the land binds only those who acquire the whole estate of the covenantor in some part of the property.

History: En. Sec. 1988, Civ. C. 1895; re-en. Sec. 4919, Rev. C. 1907; re-en. Sec. 7421, R.C.M. 1921; Cal. Civ. C. Sec. 1465; Field Civ. C. Sec. 696; re-en. Sec. 7421, R.C.M. 1935; R.C.M. 1947, 58-309.

70-17-205. Nonliability for prior or subsequent breach. No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate or after he has parted with it or ceased to enjoy its benefits.

History: En. Sec. 1989, Civ. C. 1895; re-en. Sec. 4920, Rev. C. 1907; re-en. Sec. 7422, R.C.M. 1921; Cal. Civ. C. Sec. 1466; Field Civ. C. Sec. 697; re-en. Sec. 7422, R.C.M. 1935; R.C.M. 1947, 58-310.

70-17-206. Apportionment of burdens and benefits. Where several persons holding by several titles are subject to the burden or entitled to the benefits of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively if such value can be ascertained and, if not, then according to their respective interests in point of quantity.

History: En. Sec. 1990, Civ. C. 1895; re-en. Sec. 4921, Rev. C. 1907; re-en. Sec. 7423, R.C.M. 1921; Cal. Civ. C. Sec. 1467; Field Civ. C. Sec. 698; re-en. Sec. 7423, R.C.M. 1935; R.C.M. 1947, 58-311.

Part 3

Solar and Wind Energy Easements

Part Cross-References

Right of receiving sunlight or wind as servitude creating easement, 70-17-101.

70-17-301. Creation of solar easements. An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

History: En. Sec. 1, Ch. 524, L. 1979.

70-17-302. Content of solar easements. An instrument creating a solar easement must specify at least:

(1) the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement; and

(2) any terms or conditions under which the solar easement is granted or will be terminated.

History: En. Sec. 2, Ch. 524, L. 1979.

70-17-303. Wind energy easement. (1) An easement obtained for the purpose of insuring the undisturbed flow of wind across the real property of another must be created in writing and is subject to the same conveyancing and instrument recording requirements as other easements on real property.

(2) An instrument creating a wind energy easement must include:

(a) a legal description of the real property benefited and burdened by the easement;

(b) a description of the dimensions of the easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed;

(c) the restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the windflow across and through the easement; and

(d) the terms or conditions, if any, under which the easement may be changed or terminated.

History: En. Sec. 2, Ch. 209, L. 1983.

CHAPTER 18

REAL PROPERTY — ACCESSION FIXTURES AND WATERCOURSES

Part 1 — Fixtures

70-18-101. Fixture attached by other — accession by owner.
70-18-102. Removal of fixture by tenant.

Part 2 — Watercourses

70-18-201. Alluvion or accretion — increase of bank.
70-18-202. Sudden removal of bank — right of owner to reclaim.
70-18-203. Island formed in navigable stream.
70-18-204. Island formed in nonnavigable stream.
70-18-205. Island formed by division of stream.

Part 1

Fixtures

70-18-101. Fixture attached by other — accession by owner. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in 70-18-102 and in the Uniform Commercial Code, belongs to the owner of the land unless he chooses to require the former to remove it.

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R.C.M. 1921; Cal. Civ. C. Sec. 1013; Based on Field Civ. C. Sec. 442; re-en. Sec. 6819, R.C.M. 1935; amd. Sec. 11-146, Ch. 264, L. 1963; R.C.M. 1947, 67-1301.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

70-18-102. Removal of fixture by tenant. A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use if the removal can be effected without injury to the premises unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

History: En. Sec. 1406, Civ. C. 1895; re-en. Sec. 4578, Rev. C. 1907; re-en. Sec. 6825, R.C.M. 1921; Cal. Civ. C. Sec. 1019; re-en. Sec. 6825, R.C.M. 1935; R.C.M. 1947, 67-1307.

Part 2

Watercourses

70-18-201. Alluvion or accretion — increase of bank. Where from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right-of-way over the bank.

History: En. Sec. 1401, Civ. C. 1895; re-en. Sec. 4573, Rev. C. 1907; re-en. Sec. 6820, R.C.M. 1921; Cal. Civ. C. Sec. 1014; Field Civ. C. Sec. 443; re-en. Sec. 6820, R.C.M. 1935; R.C.M. 1947, 67-1302.

70-18-202. Sudden removal of bank — right of owner to reclaim. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

History: En. Sec. 1402, Civ. C. 1895; re-en. Sec. 4574, Rev. C. 1907; re-en. Sec. 6821, R.C.M. 1921; Cal. Civ. C. Sec. 1015; Field Civ. C. Sec. 444; re-en. Sec. 6821, R.C.M. 1935; R.C.M. 1947, 67-1303.

70-18-203. Island formed in navigable stream. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state if there is no title or prescription to the contrary.

History: En. Sec. 1403, Civ. C. 1895; re-en. Sec. 4575, Rev. C. 1907; re-en. Sec. 6822, R.C.M. 1921; Cal. Civ. C. Sec. 1016; Field Civ. C. Sec. 445; re-en. Sec. 6822, R.C.M. 1935; R.C.M. 1947, 67-1304.

70-18-204. Island formed in nonnavigable stream. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

History: En. Sec. 1404, Civ. C. 1895; re-en. Sec. 4576, Rev. C. 1907; re-en. Sec. 6823, R.C.M. 1921; Cal. Civ. C. Sec. 1017; Field Civ. C. Sec. 446; re-en. Sec. 6823, R.C.M. 1935; R.C.M. 1947, 67-1305.

70-18-205. Island formed by division of stream. If a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner.

History: En. Sec. 1405, Civ. C. 1895; re-en. Sec. 4577, Rev. C. 1907; re-en. Sec. 6824, R.C.M. 1921; Cal. Civ. C. Sec. 1018; Field Civ. C. Sec. 447; re-en. Sec. 6824, R.C.M. 1935; R.C.M. 1947, 67-1306.

CHAPTER 19

REAL PROPERTY ACTIONS GENERALLY LIMITATIONS AND ADVERSE POSSESSION

Part 1 — General Provisions

70-19-101. Action defined.
70-19-102. Action affecting title or possession — filing as constructive notice.
70-19-103. Action for recovery of possession not prejudiced by alienation.

Part 2 — Actions Relating to Mining Claims

70-19-201. Actions concerning mining claims governed by local rules.
70-19-202. Abuse of property held jointly or in common — action — mining property.
70-19-203. Adverse claims under acts of congress.
70-19-204. Order for inspection or survey.

Part 3 — Provisions and Limitations Relating to the State of Montana

70-19-301. Application to lands conveyed by state.
70-19-302. Statute of limitations for state actions concerning real property.
70-19-303. Statute of limitations for actions by grantee — joinder of state.
70-19-304. Statute of limitations for action for recovery of property under void conveyance from state.
70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership.

Part 4 — Limitations and Adverse Possession

70-19-401. Action for recovery — possession within 5 years required.
70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required.
70-19-403. When action on claim by entry must be commenced.
70-19-404. Presumption of possession within prescribed period — adverse possession as exception.
70-19-405. Title by prescription.
70-19-406. Simple occupancy.
70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse.
70-19-408. Claim founded on instrument or judgment — what considered possession and occupation.
70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse.
70-19-410. Claim of title not founded on instrument or judgment — what considered occupation.
70-19-411. Occupancy and payment of taxes necessary to prove adverse possession.
70-19-412. Relation of landlord and tenant as affecting adverse possession.
70-19-413. Certain disabilities to suspend running of statutory period.
70-19-414. Right of possession not affected by descent cast.
70-19-415 through 70-19-420 reserved.
70-19-421. Action to recover royalty interest in land sold for taxes.

Chapter Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Part 1

General Provisions

70-19-101. Action defined. The word "action", as used in parts 3 and 4, is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature.

History: En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; R.C.M. 1947, 93-2720.

Cross-References

Actions and special proceedings defined, 27-1-102.

70-19-102. Action affecting title or possession — filing as constructive notice. (1) In an action affecting the title or right of possession of real property or in an action between husband and wife, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterward may file in the office of the clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the names of the parties and the object of the action or defense and a description of the property in that county affected thereby.

(2) From the time of filing of such notice only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action and only of its pendency against parties designated by their real names.

History: En. Sec. 27, p. 48, Bannack Stat.; re-en. Sec. 27, p. 139, L. 1867; re-en. Sec. 33, p. 33, Cod. Stat. 1871; amd. Sec. 70, p. 55, L. 1877; re-en. Sec. 70, 1st Div. Rev. Stat. 1879; re-en. Sec. 70, 1st Div. Comp. Stat. 1887; amd. Sec. 634, C. Civ. Proc. 1895; re-en. Sec. 6517, Rev. C. 1907; re-en. Sec. 9109, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 409; re-en. Sec. 9109, R.C.M. 1935; R.C.M. 1947, 93-3005.

Cross-References

Quieting title to real property — notice of action to be filed with Clerk and Recorder, 70-28-106.

Quieting title to real property — recording of notice by plaintiff and defendant, 70-28-213.

Partition of real property — notice of action to be filed with clerk — lis pendens, 70-29-109.

70-19-103. Action for recovery of possession not prejudiced by alienation. An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

History: En. Sec. 241, p. 93, Bannack Stat.; re-en. Sec. 263, p. 188, L. 1867; re-en. Sec. 312, p. 95, L. 1871; re-en. Sec. 362, p. 139, L. 1877; re-en. Sec. 362, 1st Div. Rev. Stat. 1879; re-en. Sec. 374, 1st Div. Comp. Stat. 1887; re-en. Sec. 1320, C. Civ. Proc. 1895; re-en. Sec. 6880, Rev. C. 1907; re-en. Sec. 9498, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 747; re-en. Sec. 9498, R.C.M. 1935; R.C.M. 1947, 93-6222.

Part 2

Actions Relating to Mining Claims

Part Cross-References
Mining generally, Title 82, ch. 2.

70-19-201. Actions concerning mining claims governed by local rules. In actions respecting mining claims, proof must be admitted of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of this state or the United States, must govern the decision of the action.

History: En. Sec. 363, p. 139, L. 1877; re-en. Sec. 363, 1st Div. Rev. Stat. 1879; re-en. Sec. 375, 1st Div. Comp. Stat. 1887; amd. Sec. 1321, C. Civ. Proc. 1895; re-en. Sec. 6881, Rev. C. 1907; re-en. Sec. 9499, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 748; re-en. Sec. 9499, R.C.M. 1935; R.C.M. 1947, 93-6223.

70-19-202. Abuse of property held jointly or in common — action — mining property. If any person shall assume and exercise exclusive ownership over or take away, destroy, lessen in value, or otherwise injure or abuse any property held in joint tenancy or tenancy in common, the party aggrieved shall have his action for the injury in the same manner as he would have if such joint tenancy or tenancy in common did not exist; provided that nothing herein contained shall prevent one cotenant or joint tenant or any number of cotenants or joint tenants acting together less than all from entering on the common property at any point or points not then in the actual occupancy of the nonjoining cotenants or joint tenants and enjoying all rights of occupancy of the property, without waste and, in the case of mining property, from mining the same in a minerlike manner and extracting, milling, and disposing of the ore from the common property, paying its or their own expenses and subject to accounting to the nonjoining cotenant or joint tenant for the net profits of such mining operations, if any made, and all liens for labor and materials incurred in such mining shall attach only to the undivided interest or interests of the working cotenants or joint tenants, but nothing herein shall prevent or preclude the cotenant or joint tenant, not joining in the operation of such mining property, from receiving his, its, or their proportionate share of all ore or ores on the dump upon payment or tendering payment of the actual cost of mining the same.

History: En. Sec. 2, p. 454, Bannack Stat.; re-en. Sec. 2, p. 504, Cod. Stat. 1871; re-en. Sec. 771, 5th Div. Rev. Stat. 1879; re-en. Sec. 1285, 5th Div. Comp. Stat. 1887; amd. Sec. 592, C. Civ. Proc. 1895; en. Sec. 1, p. 134, L. 1899; re-en. Sec. 6499, Rev. C. 1907; re-en. Sec. 9091, R.C.M. 1921; re-en. Sec. 9091, R.C.M. 1935; R.C.M. 1947, 93-2829.

Cross-References
Abuse of property held jointly or in common — action — mining property, 70-1-311.

70-19-203. Adverse claims under acts of congress. In an action brought to determine the respective rights of claimants to the possession of a mining claim or quartz lode under the provisions of the acts of congress of the

United States, it is immaterial which party is in possession, and it is sufficient to confer jurisdiction upon the court if it appears from the pleadings that the application for a patent has been made and an adverse claim thereto filed and allowed in the proper land office, and the verdict or decision must find which party is entitled to the possession of the premises in dispute.

History: En. Sec. 1322, C. Civ. Proc. 1895; re-en. Sec. 6882, Rev. C. 1907; re-en. Sec. 9500, R.C.M. 1921; re-en. Sec. 9500, R.C.M. 1935; R.C.M. 1947, 93-6224.

Cross-References

Quieting title — cost if defendant disclaims, 70-28-112.

70-19-204. Order for inspection or survey. (1) Whenever any person shall have any right to or interest in any lead, lode, or mining claim which is in the possession of another person and it shall be necessary for the ascertainment, enforcement, or protection of such right or interest that an inspection, examination, or survey of such lead, mine, lode, or mining claim should be had or made or whenever any inspection, examination, or survey of any such lode or mining claim shall be necessary to protect, ascertain, or enforce the right or interest of any person in another mine, lode, or mining claim and the person in possession of the same shall refuse for a period of 3 days after demand therefor in writing to allow such inspection, examination, or survey to be had or made, the party so desiring the same may present to the district court or a judge thereof of the county wherein the mine, lead, lode, or mining claim is situated a petition under oath setting out his interest in the premises, describing the same, that the premises are in the possession of a party, naming him, the reason why such examination, inspection, or survey is necessary, the demand made on the person in possession so to permit such examination, inspection, or survey, and his refusal so to do.

(2) The court or judge shall thereupon appoint a time and place for hearing such petition and shall order notice thereof to be served upon the adverse party, which notice shall be served at least 1 day before the day of hearing. On the hearing either party may read affidavits or produce oral testimony, and if the court or judge is satisfied that the facts stated in the petition are true, he shall make an order for an inspection, examination, or survey of the lode or mining claim in question in such manner, at such time, and by such persons as are mentioned in the order. Such person shall thereupon have free access to such mine, lead, lode, or mining claim for the purpose of making such inspection, examination, or survey, and any interference with such person while acting under such order shall be contempt of court.

(3) If the order of the court is made while an action is pending between the parties to the order, the costs of obtaining the order shall abide the result of the action, but all costs of making such examination or survey shall be paid by the petitioner.

History: En. Sec. 8, p. 10, L. 1881; re-en. Sec. 376, 1st Div. Comp. Stat. 1887; re-en. Sec. 1317, C. Civ. Proc. 1895; re-en. Sec. 6876, Rev. C. 1907; re-en. Sec. 9494, R.C.M. 1921; re-en. Sec. 9494, R.C.M. 1935; R.C.M. 1947, 93-6218.

Part 3

Provisions and Limitations Relating to the State of Montana

Part Cross-References

Recreational use of streams, Title 23, ch. 2, part 3.

Sales of state lands, Title 77, ch. 2, part 3.

70-19-301. Application to lands conveyed by state. The provisions of parts 3 and 4 shall apply to all lands sold and conveyed before July 1, 1955, by the state of Montana for which a valid consideration was received by the state; provided that the state, at the time of any such sale or conveyance, was not precluded by the constitution of Montana or by the terms of the grant of such lands by the United States from selling and disposing of the same; and provided further, that no occupant of a public way or other ground dedicated or appropriated by the state to public use and not subject to sale shall acquire by reason of his occupancy any title thereto.

History: En. Sec. 1, Ch. 195, L. 1955; R.C.M. 1947, 93-2516.

70-19-302. Statute of limitations for state actions concerning real property. The state will not sue any person for or in respect to any real property or the issues or profits thereof by reason of the right or title of the state to the same unless:

(1) such right or title shall have accrued within 10 years before any action or other proceeding for the same is commenced; or

(2) the state or those from whom it claims shall have received the rents and profits of such real property or of some part thereof within the space of 10 years.

History: En. Sec. 480, C. Civ. Proc. 1895; re-en. Sec. 6429, Rev. C. 1907; re-en. Sec. 9012, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 315; re-en. Sec. 9012, R.C.M. 1935; R.C.M. 1947, 93-2501.

70-19-303. Statute of limitations for actions by grantee — joinder of state. (1) No action can be brought for or in respect to real property by any person claiming under letters patent or grants from this state unless the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within 10 years before the commencement of the action.

(2) In any such action the state of Montana may be made a party defendant and shall have only the defenses thereto as are available to other parties defendant to the action, provided that no judgment in any such action shall include damages, attorney fees, or court costs against the state of Montana.

History: En. Sec. 481, C. Civ. Proc. 1895; re-en. Sec. 6430, Rev. C. 1907; re-en. Sec. 9013, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 316; re-en. Sec. 9013, R.C.M. 1935; amd. Sec. 1, Ch. 196, L. 1955; R.C.M. 1947, 93-2502.

70-19-304. Statute of limitations for action for recovery of property under void conveyance from state. When letters patent or grants of real property issued or made by the state are declared void by the determination of a competent court, an action for the recovery of the property so conveyed may be brought, either by the state or by any subsequent patentee or grantee of the property, his heirs, or assigns, within 10 years after such determination, but not after that period.

History: En. Sec. 482, C. Civ. Proc. 1895; re-en. Sec. 6431, Rev. C. 1907; re-en. Sec. 9014, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 317; re-en. Sec. 9014, R.C.M. 1935; R.C.M. 1947, 93-2503.

Cross-References

Actions arising from the seizure or sale of property for taxes, 27-2-210.

70-19-305. Certificate of purchase from state or United States prima facie evidence of ownership. A certificate of purchase or of location of any lands in this state issued or made in pursuance of any law of the United States or of this state is prima facie evidence that the holder or assignee of such certificate is the owner of the land described therein, but this evidence may be overcome by proof that at the time of the location or time of filing a preemption claim on which the certificate may have been issued, the land was in the adverse possession of the adverse party or those under whom he claims or that the adverse party is holding the land for mining purposes.

History: En. Sec. 3213, C. Civ. Proc. 1895; re-en. Sec. 7931, Rev. C. 1907; re-en. Sec. 10575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1925; re-en. Sec. 10575, R.C.M. 1935; R.C.M. 1947, 93-1001-37.

Part 4

Limitations and Adverse Possession

Part Cross-References

Wrongful occupation of real property, 27-1-318.

Actions arising from the seizure or sale of property for taxes, 27-2-210.

70-19-401. Action for recovery — possession within 5 years required. No action for the recovery of real property or for the possession thereof can be maintained unless it appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the property in question within 5 years before the commencement of the action.

History: En. Sec. 29, p. 45, L. 1877; re-en. Sec. 29, 1st Div. Rev. Stat. 1879; re-en. Sec. 29, 1st Div. Comp. Stat. 1887; amd Sec. 483, C. Civ. Proc. 1895; re-en. Sec. 6432, Rev. C. 1907; re-en. Sec. 9015, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 318; re-en. Sec. 9015, R.C.M. 1935; amd. Sec. 1, Ch. 224, L. 1953; amd. Sec. 12, Ch. 263, L. 1975; R.C.M. 1947, 93-2504.

70-19-402. Action or defense arising out of title to property or profits — possession within 5 years required. No cause of action or defense to an action, arising out of the title to real property or to rents or profits out of the same, can be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within 5 years before the commencement of the act in respect to which such action is prosecuted or defense made.

History: En. Sec. 30, p. 45, L. 1877; re-en. Sec. 30, 1st Div. Rev. Stat. 1879; re-en. Sec. 30, 1st Div. Comp. Stat. 1887; amd. Sec. 484, C. Civ. Proc. 1895; re-en. Sec. 6433, Rev. C. 1907; re-en. Sec. 9016, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 319; re-en. Sec. 9016, R.C.M. 1935; amd. Sec. 2, Ch. 224, L. 1953; R.C.M. 1947, 93-2505.

70-19-403. When action on claim by entry must be commenced. No entry upon real estate is deemed sufficient or valid as a claim unless an action be commenced thereupon within 1 year after making such entry and within 5 years from the time when the right to make it descended or accrued.

History: En. Sec. 3, p. 466, Bannack Stat.; re-en. Sec. 3, p. 515, Cod. Stat. 1871; amd. Sec. 31, p. 46, L. 1877; re-en. Sec. 31, 1st Div. Rev. Stat. 1879; re-en. Sec. 31, 1st Div. Comp. Stat. 1887; amd. Sec. 485, C. Civ. Proc. 1895; re-en. Sec. 6434, Rev. C. 1907; re-en. Sec. 9017, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 320; re-en. Sec. 9017, R.C.M. 1935; amd. Sec. 3, Ch. 224, L. 1953; R.C.M. 1947, 93-2506.

70-19-404. Presumption of possession within prescribed period — adverse possession as exception. In every action for the recovery of real property or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title unless it appear that the property has been held and possessed adversely to such legal title for 5 years before the commencement of the action.

History: En. Sec. 4, p. 466, Bannack Stat.; re-en. Sec. 4, p. 515, Cod. Stat. 1871; amd. Sec. 32, p. 46, L. 1877; re-en. Sec. 32, 1st Div. Rev. Stat. 1879; re-en. Sec. 32, 1st Div. Comp. Stat. 1887; amd. Sec. 486, C. Civ. Proc. 1895; re-en. Sec. 6435, Rev. C. 1907; re-en. Sec. 9018, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 321; re-en. Sec. 9018, R.C.M. 1935; amd. Sec. 4, Ch. 224, L. 1953; R.C.M. 1947, 93-2507.

70-19-405. Title by prescription. Except as provided in 23-2-322, occupancy for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

History: En. Sec. 1391, Civ. C. 1895; re-en. Sec. 4571, Rev. C. 1907; re-en. Sec. 6818, R.C.M. 1921; Cal. Civ. C. Sec. 1007; Field Civ. C. Sec. 441; re-en. Sec. 6818, R.C.M. 1935; R.C.M. 1947, 67-1203; amd. Sec. 6, Ch. 556, L. 1985.

Cross-References

Prescriptive easement not acquired by recreational use, 23-2-322.

70-19-406. Simple occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession.

History: En. Sec. 1390, Civ. C. 1895; re-en. Sec. 4570, Rev. C. 1907; re-en. Sec. 6817, R.C.M. 1921; Cal. Civ. C. Sec. 1006; Field Civ. C. Sec. 440; re-en. Sec. 6817, R.C.M. 1935; R.C.M. 1947, 67-1202.

70-19-407. Occupancy under claim founded on instrument or judgment — when considered adverse. When it appears that the occupant or those under whom he claims entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument as being a conveyance of the property in question or upon the decree or judgment of a competent court and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment or of some part of the property under such claim for 5 years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

History: En. Sec. 33, p. 46, L. 1877; re-en. Sec. 33, 1st Div. Rev. Stat. 1879; re-en. Sec. 33, 1st Div. Comp. Stat. 1887; amd. Sec. 487, C. Civ. Proc. 1895; re-en. Sec. 6436, Rev. C. 1907; re-en. Sec. 9019, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 322; re-en. Sec. 9019, R.C.M. 1935; amd. Sec. 5, Ch. 224, L. 1953; R.C.M. 1947, 93-2508.

70-19-408. Claim founded on instrument or judgment — what considered possession and occupation. (1) For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

(a) where it has been usually cultivated or improved;

(b) where it has been protected by a substantial enclosure;

(c) where although not enclosed it has been used for the supply of fuel or of fencing timber, either for the purpose of husbandry or for pasturage or for the ordinary use of the occupant.

(2) Where a known farm or a single lot has been partly improved, the portion of such farm or lot that has been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

History: En. Sec. 5, p. 466, Bannack Stat.; re-en. Sec. 5, p. 516, Cod. Stat. 1871; amd. Sec. 34, p. 46, L. 1877; re-en. Sec. 34, 1st Div. Rev. Stat. 1879; re-en. Sec. 34, 1st Div. Comp. Stat. 1887; amd. Sec. 488, C. Civ. Proc. 1895; re-en. Sec. 6437, Rev. C. 1907; re-en. Sec. 9020, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 323; re-en. Sec. 9020, R.C.M. 1935; R.C.M. 1947, 93-2509.

70-19-409. Actual occupancy under claim of title not founded on instrument or judgment — adverse. Where it appears that there has been an actual continued occupation of land under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied and no other is deemed to have been held adversely.

History: En. Sec. 6, p. 467, Bannack Stat.; re-en. Sec. 6, p. 516, Cod. Stat. 1871; re-en. Sec. 35, p. 46, L. 1877; re-en. Sec. 35, 1st Div. Rev. Stat. 1879; re-en. Sec. 35, 1st Div. Comp. Stat. 1887; amd. Sec. 489, C. Civ. Proc. 1895; re-en. Sec. 6438, Rev. C. 1907; re-en. Sec. 9021, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 324; re-en. Sec. 9021, R.C.M. 1935; R.C.M. 1947, 93-2510.

70-19-410. Claim of title not founded on instrument or judgment — what considered occupation. For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

(1) where it has been protected by a substantial enclosure;

(2) where it has been usually cultivated or improved.

History: En. Sec. 7, p. 467, Bannack Stat.; re-en. Sec. 7, p. 516, Cod. Stat. 1871; amd. Sec. 36, p. 47, L. 1877; re-en. Sec. 36, 1st Div. Rev. Stat. 1879; re-en. Sec. 36, 1st Div. Comp. Stat. 1887; re-en. Sec. 490, C. Civ. Proc. 1895; re-en. Sec. 6439, Rev. C. 1907; re-en. Sec. 9022, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 325; re-en. Sec. 9022, R.C.M. 1935; R.C.M. 1947, 93-2511.

70-19-411. Occupancy and payment of taxes necessary to prove adverse possession. In no case shall adverse possessions be considered established under this code unless it shall be shown that the land has been occupied and claimed for a period of 5 years continuously and the party or persons, their predecessors, and grantors have during such period paid all the taxes, state, county, or municipal, which have been legally levied and assessed upon said land.

History: En. Sec. 1, Ch. 3, L. 1917; re-en. Sec. 9024, R.C.M. 1921; re-en. Sec. 9024, R.C.M. 1935; amd. Sec. 7, Ch. 224, L. 1953; R.C.M. 1947, 93-2513.

70-19-412. Relation of landlord and tenant as affecting adverse possession. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of 5 years from the termination of the tenancy or, where there has been no written lease, until the expiration of 5 years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods prescribed in this section.

History: En. Sec. 37, p. 47, L. 1877; re-en. Sec. 37, 1st Div. Rev. Stat. 1879; re-en. Sec. 37, 1st Div. Comp. Stat. 1887; amd. Sec. 491, C. Civ. Proc. 1895; re-en. Sec. 6440, Rev. C. 1907; re-en. Sec. 9023, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 326; re-en. Sec. 9023, R.C.M. 1935; amd. Sec. 6, Ch. 224, L. 1953; R.C.M. 1947, 93-2512.

Cross-References

The Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

70-19-413. Certain disabilities to suspend running of statutory period. (1) Subsection (2) applies if a person entitled to commence an action for the recovery of real property or for the recovery of the possession thereof or to make any entry or defense founded on the title to real property or to rents or services out of the same is, at the same time such title first descends or accrues:

(a) under the age of majority;

(b) seriously mentally ill; or

(c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term of less than for life.

(2) The time during which disability continues is not considered any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense, but such action may be commenced or entry or defense made within the period of 5 years after such disability ceases or after the death of the person entitled who dies under such

disability, but such action may not be commenced or entry or defense made after that period.

History: En. Sec. 39, p. 48, L. 1877; re-en. Sec. 39, 1st Div. Rev. Stat. 1879; re-en. Sec. 39, 1st Div. Comp. Stat. 1887; amd. Sec. 493, C. Civ. Proc. 1895; re-en. Sec. 6442, Rev. C. 1907; re-en. Sec. 9026, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 328; re-en. Sec. 9026, R.C.M. 1935; amd. Sec. 8, Ch. 224, L. 1953; R.C.M. 1947, 93-2515; amd. Sec. 6, Ch. 115, L. 1979; amd. Sec. 181, Ch. 575, L. 1981.

70-19-414. Right of possession not affected by descent cast. The right of a person to the possession of real property is not impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

History: En. Sec. 38, p. 48, L. 1877; re-en. Sec. 38, 1st Div. Rev. Stat. 1879; re-en. Sec. 38, 1st Div. Comp. Stat. 1887; re-en. Sec. 492, C. Civ. Proc. 1895; re-en. Sec. 6441, Rev. C. 1907; re-en. Sec. 9025, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 327; re-en. Sec. 9025, R.C.M 1935; R.C.M. 1947, 93-2514.

70-19-415 through 70-19-420 reserved.

70-19-421. Action to recover royalty interest in land sold for taxes. An action against a county to recover a royalty interest in land acquired by the county by tax deed must be brought within the period prescribed in 27-2-210.

History: En. Sec. 4, Ch. 458, L. 1985.

Cross-References

Deed of conveyance — reservation of mineral royalty interest, 7-8-2305.

CHAPTER 20

TRANSFER OF REAL PROPERTY

Part 1 — Method of Transfer

70-20-101. Transfer to be in writing — statute of frauds.
70-20-102. Exceptions to statute of frauds.
70-20-103. Form of grant.
70-20-104. Words of inheritance unnecessary.
70-20-105. Joint tenancy — how created.
70-20-106. Grant by married person — how acknowledged.
70-20-107. Power of attorney of married person — how acknowledged.
70-20-108. Attorney-in-fact — how must execute for principal.
70-20-109. Change of owner's name after acquisition — later conveyance to include former name.
70-20-110. Redelivery or cancellation of grant — no retransfer.
70-20-111 and 70-20-112 reserved.
70-20-113. Definitions — notice of presence of smoke detectors upon sale of dwelling.
70-20-114 reserved.
70-20-115. Notice to purchaser of property under contract for deed.

Part 2 — Construction of Grant

70-20-201. Rules for construing description.

70-20-202. Extrinsic evidence not to be considered in construction of deed — exceptions.

Part 3 — Effect of Transfer

70-20-301. Fee simple presumed to pass.
70-20-302. After-acquired title to pass by operation of law.
70-20-303. Grant conclusive — exception for good faith purchaser.
70-20-304. Implied covenants — free from encumbrance.
70-20-305. Encumbrance defined.
70-20-306. Responsibility of heirs of covenantor — certain warranties abolished.
70-20-307. Transfer of land bounded by highway — what passes.
70-20-308. Easements to pass with property.
70-20-309. Transfer of owner ousted of possession — effect.
70-20-310. Conveyance in joint tenancy — right of survivorship.
70-20-311. Grant on condition subsequent.
70-20-312. Grant on condition precedent.
70-20-313. Grant by owner for life or years.
70-20-314. Grant of property occupied by tenant.
70-20-315. Validation of unacknowledged deeds.
70-20-316. Deeds made prior to 1900 — presumption grantor had no wife.

Part 4 — Fraudulent Conveyances

70-20-401. Instrument made with intent to defraud — void.
70-20-402. Instrument not void as to purchaser with notice — exception.
70-20-403. Grant by person with power to revoke — power executed.
70-20-404. Purchaser in good faith not affected.
70-20-405. Other provisions on unlawful transfers — where found.

Chapter Cross-References

Breach of agreement to convey real property, 27-1-314.

Breach of agreement to buy real property, 27-1-315.

Breach of covenants in grants of estates in real property, 27-1-316.

Montana Title Insurance Act, Title 33, ch. 25.

Transfer of property grants and their interpretation, Title 70, ch. 1, part 5.

Small tract financing — trust indentures, Title 71, ch. 1, part 3.

Part 1

Method of Transfer

70-20-101. Transfer to be in writing — statute of frauds. No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing.

History: En. Sec. 6, p. 393, Cod. Stat. 1871; re-en. Sec. 160, 5th Div. Rev. Stat. 1879; re-en. Sec. 217, 5th Div. Comp. Stat. 1887; re-en. Sec. 3274, C. Civ. Proc. 1895; re-en. Sec. 7967, Rev. C. 1907; re-en. Sec. 10611, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1971; re-en. Sec. 10611, R.C.M. 1935; R.C.M. 1947, 93-1401-5; amd. Sec. 7, Ch. 115, L. 1979; amd. Sec. 218, Ch. 685, L. 1989.

Cross-References

What contracts must be in writing, 28-2-903.

70-20-102. Exceptions to statute of frauds. Section 70-20-101 must not be construed to:

(1) affect the power of a testator in the disposition of his real property by a last will and testament;

(2) prevent any trust from arising or being extinguished by implication or operation of law; or

(3) abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.

History: En. Sec. 7, p. 393, Cod. Stat. 1871; re-en. Sec. 161, 5th Div. Rev. Stat. 1879; re-en. Sec. 218, 5th Div. Comp. Stat. 1887; re-en. Sec. 3275, C. Civ. Proc. 1895; re-en. Sec. 7968, Rev. C. 1907; re-en. Sec. 10612, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1972; re-en. Sec. 10612, R.C.M. 1935; R.C.M. 1947, 93-1401-6.

Cross-References

Specific and preventive relief, Title 27, ch. 1, part 4.

Wills — execution, addendums, and revocation, Title 72, ch. 2, part 3.

Judicial proceedings concerning trusts, Title 72, ch. 35.

70-20-103. Form of grant. A grant of an estate in real property may be made in substance as follows:

"I, A.B., in consideration of .... dollars now paid, grant to C.D. all the real property situated in (insert name of county) County, state of Montana, bounded (or described) as follows: (Here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name as, for instance, "the Norris ranch".)

Witness my hand this (insert day) day of (insert month), 19...

....

A.B."

History: En. Sec. 1501, Civ. C. 1895; re-en. Sec. 4613, Rev. C. 1907; re-en. Sec. 6860, R.C.M. 1921; Cal. Civ. C. Sec. 1092; re-en. Sec. 6860, R.C.M. 1935; R.C.M. 1947, 67-1602.

70-20-104. Words of inheritance unnecessary. Words of inheritance or succession are not requisite to transfer a fee in real property.

History: En. Sec. 1476, Civ. C. 1895; re-en. Sec. 4608, Rev. C. 1907; re-en. Sec. 6855, R.C.M. 1921; Cal. Civ. C. Sec. 1072; Field Civ. C. Sec. 478; re-en. Sec. 6855, R.C.M. 1935; R.C.M. 1947, 67-1521.

70-20-105. Joint tenancy — how created. (1) A joint tenancy as to any interest in real property may be established by the owner thereof by designating in the instrument of conveyance or transfer the names of such joint tenants, including his own, without the necessity of any transfer or conveyance to or through a third person.

(2) All joint tenancies created in this manner prior to July 1, 1963, are sufficient in law to create a joint tenancy.

History: En. Sec. 1, Ch. 208, L. 1963; amd. Sec. 1, Ch. 9, L. 1971; R.C.M. 1947, 67-1602.1.

Cross-References

Ownership by several persons — types, 70-1-306.

70-20-106. Grant by married person — how acknowledged. No estate in the real property of a married person passes by any grant purporting to be executed or acknowledged by such person unless the grant or instrument is acknowledged by the grantor in the manner prescribed by 1-5-206 and 1-5-207.

History: **En. Sec. 1502, Civ. C. 1895; re-en. Sec. 4614, Rev. C. 1907; re-en. Sec. 6861, R.C.M. 1921; Cal. Civ. C. Sec. 1093; Based on Field Civ. C. Sec. 486; re-en. Sec. 6861, R.C.M. 1935; amd. Sec. 33, Ch. 535, L. 1975; R.C.M. 1947, 67-1603.**

70-20-107. Power of attorney of married person — how acknowledged. A power of attorney of a married person, authorizing the execution of an instrument transferring an estate in his separate real property, has no validity for that purpose unless acknowledged by him in the manner provided in 1-5-206 and 1-5-207.

History: **En. Sec. 1503, Civ. C. 1895; re-en. Sec. 4615, Rev. C. 1907; re-en. Sec. 6862, R.C.M. 1921; Cal. Civ. C. Sec. 1094; re-en. Sec. 6862, R.C.M. 1935; R.C.M. 1947, 67-1604; amd. Sec. 8, Ch. 115, L. 1979.**

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-20-108. Attorney-in-fact — how must execute for principal. When an attorney-in-fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it and his own name as attorney-in-fact.

History: **En. Sec. 1504, Civ. C. 1895; re-en. Sec. 4616, Rev. C. 1907; re-en. Sec. 6863, R.C.M. 1921; Cal. Civ. C. Sec. 1095; re-en. Sec. 6863, R.C.M. 1935; R.C.M. 1947, 67-1605.**

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-20-109. Change of owner's name after acquisition — later conveyance to include former name. Any person in whom the title of real estate is vested, who shall afterwards from any cause have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section shall subject any such person to a penalty of $50, to be collected by the county attorney of the county in which the real estate is situated and by him paid into the treasury of said county for the benefit of the common schools thereof.

History: **En. Sec. 1505, Civ. C. 1895; re-en. Sec. 4617, Rev. C. 1907; re-en. Sec. 6864, R.C.M. 1921; Cal. Civ. C. Sec. 1096; re-en. Sec. 6864, R.C.M. 1935; R.C.M. 1947, 67-1606.**

70-20-110. Redelivery or cancellation of grant — no retransfer. Redelivering a grant of real property to the grantor or canceling it does not operate to retransfer the title.

History: **En. Sec. 1456, Civ. C. 1895; re-en. Sec. 4600, Rev. C. 1907; re-en. Sec. 6847, R.C.M. 1921; Cal. Civ. C. Sec. 1058; Field Civ. C. Sec. 469; re-en. Sec. 6847, R.C.M. 1935; R.C.M. 1947, 67-1513.**

70-20-111 and 70-20-112 reserved.

70-20-113. Definitions — notice of presence of smoke detectors upon sale of dwelling. (1) In this section, the following definitions apply:

(a) "Dwelling" means a building or portion of a building, including a mobile home or housetrailer, that contains not more than two dwelling units.

(b) "Dwelling unit" means a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for not more than one family.

(c) "Smoke detector" means a device that detects visible or invisible particles or combustion.

(2) Upon the sale or transfer of ownership of a dwelling not otherwise required to have a smoke detector, the seller shall provide a written notice to the buyer in a buy-sell agreement or at the time of the sale to the buyer that the dwelling is equipped or is not equipped with smoke detectors or other fire detection devices.

(3) Neither the seller nor his agent is liable in a civil action for failure to comply with, or negligence in complying with, the requirements of this section. Evidence of failure to comply with, or negligence in complying with, this section is not admissible in a civil action.

History: En. Sec. 1, Ch. 30, L. 1991.

Compiler's Comments

Erroneous Codification Instruction: Section 2, Ch. 30, L. 1991, provided that sec. 1, Ch. 30, L. 1991, be codified as an integral part of Title 30, ch. 11, part 2; Title 30, ch. 11, part 2, only applies to the transfer of personal property, therefore the Code Commissioner has codified sec. 1, Ch. 30, L. 1991, under Title 70, ch. 20, part 1.

70-20-114 reserved.

70-20-115. Notice to purchaser of property under contract for deed. (1) As used in this section, "purchaser under contract for deed" means:

(a) any person who:

(i) has entered into a contract with the record owner of real property in which it was agreed that the record owner will deliver the deed to the property to the purchaser when certain conditions have been met, such as completion of payments by the purchaser; and

(ii) has recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21;

(b) any assignee or successor of a person included under subsection (a), if such assignee or successor has also recorded the contract or an abstract of the contract in accordance with Title 70, chapter 21.

(2) When it is required by statute that legal notice be given to the owner of real property, the same notice must be given to a purchaser of that property under a contract for deed.

History: En. Sec. 1, Ch. 526, L. 1983.

Cross-References

Resolution of intent by first-class city — notice, 7-2-4312.

Division of assessment, 7-3-1309.

Department of finance, 7-3-4431.

Vacating or changing of street name, 7-3-4448.

Notice of intention to levy tax, 7-13-2304.

Power to order certain improvements without creation of SID, 7-14-4109.

Notice of hearing on urban renewal plan, 7-15-4215.

Notice of hearing on petition to create mosquito district, 7-22-2406.

Hearing on petition for dissolution — notice, 7-22-2446.

Notice of classification and appraisal to owners — appeals, 15-7-102.

Reclassification by department, 15-7-208.

County tax appeal board — meetings and compensation, 15-15-101.

Notice of assessment — opportunity for conference — appeal, 15-23-102.

"Notice" defined, 25-3-101.

Service of order to repair or demolish structure, 50-62-103.

Publication and distribution of notice, 69-4-317.

Notice of hearing on proposed assessments, 69-4-325.

Conversion of facilities on public property — notice to landowners, 69-4-353.

Contents of complaints, 70-30-203.

Hearing on preliminary plat, 76-3-605.

Removal of infected trees — assessment of costs, 80-7-114.

Expenses of eradicating orchard diseases — collection as tax, 80-7-206.

Notice of condemnation — filing of plat, 82-2-224.

Permit application, 82-4-222.

Reclamation by board, 82-4-239.

Notice of drilling operations, 82-10-503.

Reservoirs — examination and report — subsequent actions, 85-15-307.

Part 2

Construction of Grant

Part Cross-References

Interpretation of contracts, Title 28, ch. 3.

70-20-201. Rules for construing description. The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

(1) Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by the first mentioned particulars.

(2) When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount.

(3) Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces and that of lines paramount to both.

(4) When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or thread of the stream is held under another title.

(5) When a navigable lake, where there is no tide, is the boundary, the rights of the grantor to low watermark are included in the conveyance.

(6) When the description refers to a map and that reference is inconsistent with other particulars, it controls them if it appear that the parties acted with reference to the map; otherwise, the map is subordinate to other definite and ascertained particulars.

History: En. Sec. 3413, C. Civ. Proc. 1895; re-en. Sec. 8039, Rev. C. 1907; re-en. Sec. 10683, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2077; re-en. Sec. 10683, R.C.M. 1935; R.C.M. 1947, 93-2201-4.

70-20-202. Extrinsic evidence not to be considered in construction of deed — exceptions. (1) When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) where a mistake or imperfection of the writing is put in issue by the pleadings;

(b) where the validity of the agreement is the fact in dispute.

(2) But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in 1-4-102, or to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement" includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13.

Cross-References

When extrinsic evidence concerning a written agreement may be considered, 28-2-905.

Part 3

Effect of Transfer

70-20-301. Fee simple presumed to pass. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

History: En. Sec. 1511, Civ. C. 1895; re-en. Sec. 4619, Rev. C. 1907; re-en. Sec. 6866, R.C.M. 1921; Cal. Civ. C. Sec. 1105; re-en. Sec. 6866, R.C.M. 1935; R.C.M. 1947, 67-1608.

70-20-302. After-acquired title to pass by operation of law. Where a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors.

History: En. Sec. 32, p. 401, Cod. Stat. 1871; re-en. Sec. 209, 5th Div. Rev. Stat. 1879; re-en. Sec. 267, 5th Div. Comp. Stat. 1887; amd. Sec. 1512, Civ. C. 1895; re-en. Sec. 4620, Rev. C. 1907; re-en. Sec. 6867, R.C.M. 1921; Cal. Civ. C. Sec. 1106; re-en. Sec. 6867, R.C.M. 1935; R.C.M. 1947, 67-1609.

70-20-303. Grant conclusive — exception for good faith purchaser. Every grant of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

History: En. Sec. 1513, Civ. C. 1895; re-en. Sec. 4621, Rev. C. 1907; re-en. Sec. 6868, R.C.M. 1921; Cal. Civ. C. Sec. 1107; Field Civ. C. Sec. 490; re-en. Sec. 6868, R.C.M. 1935; R.C.M. 1947, 67-1610.

70-20-304. Implied covenants — free from encumbrance. (1) From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants and none other on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns are implied unless restrained by express terms contained in such conveyance:

(a) that previous to the time of the execution of such conveyance the grantor has not conveyed the same estate or any right, title, or interest therein to any person other than the grantee;

(b) that such estate is at the time of the execution of such conveyance free from encumbrances done, made, or suffered by the grantor or any person claiming under him.

(2) Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

History: En. Sec. 50, p. 487, Bannack Stat.; re-en. Sec. 50, p. 404, Cod. Stat. 1871; re-en. Sec. 227, 5th Div. Rev. Stat. 1879; re-en. Sec. 285, 5th Div. Comp. Stat. 1887; amd. Sec. 1519, Civ. C. 1895; re-en. Sec. 4627, Rev. C. 1907; re-en. Sec. 6874, R.C.M. 1921; Cal. Civ. C. Sec. 1113; re-en. Sec. 6874, R.C.M. 1935; R.C.M. 1947, 67-1616.

Cross-References

Breach of covenants in grants of estates in real property, 27-1-316.

Form of covenants, 30-11-110.

70-20-305. Encumbrance defined. The term "encumbrances" includes taxes, assessments, and all liens upon real property.

History: En. Sec. 1520, Civ. C. 1895; re-en. Sec. 4628, Rev. C. 1907; re-en. Sec. 6875, R.C.M. 1921; Cal. Civ. C. Sec. 1114; re-en. Sec. 6875, R.C.M. 1935; R.C.M. 1947, 67-1617.

70-20-306. Responsibility of heirs of covenantor — certain warranties abolished. Lineal and collateral warrants, with all their incidents, are abolished, but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

History: En. Sec. 49, p. 487, Bannack Stat.; re-en. Sec. 49, p. 403, Cod. Stat. 1871; re-en. Sec. 226, 5th Div. Rev. Stat. 1879; re-en. Sec. 284, 5th Div. Comp. Stat. 1887; amd. Sec. 1521, Civ. C. 1895; re-en. Sec. 4629, Rev. C. 1907; re-en. Sec. 6876, R.C.M. 1921; Cal. Civ. C. Sec. 1115; re-en. Sec. 6876, R.C.M. 1935; R.C.M. 1947, 67-1618.

70-20-307. Transfer of land bounded by highway — what passes. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof unless a different intent appears from the grant.

History: En. Sec. 1518, Civ. C. 1895; re-en. Sec. 4626, Rev. C. 1907; re-en. Sec. 6873, R.C.M. 1921; Cal. Civ. C. Sec. 1112; Based on Field Civ. C. Sec. 492; re-en. Sec. 6873, R.C.M. 1935; R.C.M. 1947, 67-1615.

70-20-308. Easements to pass with property. A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed.

History: En. Sec. 1510, Civ. C. 1895; re-en. Sec. 4618, Rev. C. 1907; re-en. Sec. 6865, R.C.M. 1921; Cal. Civ. C. Sec. 1104; Field Civ. C. Sec. 488; re-en. Sec. 6865, R.C.M. 1935; R.C.M. 1947, 67-1607.

70-20-309. Transfer of owner ousted of possession — effect. Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

History: En. Sec. 1443, Civ. C. 1895; re-en. Sec. 4593, Rev. C. 1907; re-en. Sec. 6840, R.C.M. 1921; Cal. Civ. C. Sec. 1047; re-en. Sec. 6840, R.C.M. 1935; R.C.M. 1947, 67-1506.

70-20-310. Conveyance in joint tenancy — right of survivorship. In all conveyances of real property made in joint tenancy where the right of survivorship is contained in the grant of such conveyance, the right of survivorship exists by virtue of such grant.

History: En. Sec. 1, Ch. 118, L. 1943; R.C.M. 1947, 67-310; amd. Sec. 9, Ch. 115, L. 1979.

70-20-311. Grant on condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors by grant duly acknowledged for record.

History: En. Sec. 1515, Civ. C. 1895; re-en. Sec. 4623, Rev. C. 1907; re-en. Sec. 6870, R.C.M. 1921; Cal. Civ. C. Sec. 1109; re-en. Sec. 6870, R.C.M. 1935; R.C.M. 1947, 67-1612.

Cross-References

Condition subsequent defined, 28-1-405.

70-20-312. Grant on condition precedent. An instrument purporting to be a grant of real property to take effect upon condition precedent passes the estate upon the performance of the condition.

History: En. Sec. 1516, Civ. C. 1895; re-en. Sec. 4624, Rev. C. 1907; re-en. Sec. 6871, R.C.M. 1921; Cal. Civ. C. Sec. 1110; re-en. Sec. 6871, R.C.M. 1935; R.C.M. 1947, 67-1613.

Cross-References

Condition precedent defined, 28-1-403.

70-20-313. Grant by owner for life or years. A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate but passes to the grantee all the estate which the grantor could lawfully transfer.

History: En. Sec. 1514, Civ. C. 1895; re-en. Sec. 4622, Rev. C. 1907; re-en. Sec. 6869, R.C.M. 1921; Cal. Civ. C. Sec. 1108; Field Civ. C. Sec. 491; re-en. Sec. 6869, R.C.M. 1935; R.C.M. 1947, 67-1611.

70-20-314. Grant of property occupied by tenant. When real property is occupied by a tenant, a grant of any estate therein by his landlord is valid without an attornment of the tenant to the grantee; but the payment of rent to such grantor by his tenant before notice of the grant is binding upon the grantee, and the tenant is not liable to the grantee for any breach of the condition of the lease until he has had notice of the grant.

History: **En. Sec. 1517, Civ. C. 1895; re-en. Sec. 4625, Rev. C. 1907; re-en. Sec. 6872, R.C.M. 1921; Cal. Civ. C. Sec. 1111; Field Civ. C. Sec. 493; re-en. Sec. 6872, R.C.M. 1935; R.C.M. 1947, 67-1614.**

70-20-315. Validation of unacknowledged deeds. All deeds to real property executed prior to January 1, 1983, in this state or any state or territory of the United States, provided no action is pending on October 1, 1983, to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state and be conclusive evidence of the title to the lands therein described against the grantors, their heirs, and assigns.

History: **En. Sec. 1, Ch. 82, L. 1973; R.C.M. 1947, 39-139; amd. Sec. 1, Ch. 296, L. 1983.**

70-20-316. Deeds made prior to 1900 — presumption grantor had no wife. When a deed to real property has been made, executed, and acknowledged prior to the year 1900 by a grantor without recital in the body of the deed or acknowledgment as to whether or not the grantor is married or single and the wife of such grantor, if any, not joining in the conveyance or otherwise releasing or conveying her dower, the presumption shall be that the person conveying such land had no wife living at the date of such conveyance and that such land was conveyed free of all right of dower, inchoate or vested.

History: **En. Sec. 1, Ch. 183, L. 1945; R.C.M. 1947, 39-131.**

Part 4

Fraudulent Conveyances

Part Cross-References

Condition concurrent defined, 28-1-404.

Condition subsequent defined, 28-1-405.

What conditions must be performed before requiring performance by another, 28-1-406.

70-20-401. Instrument made with intent to defraud — void. Every instrument, other than a will, affecting an estate in real property, including every charge upon real property or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or encumbrancers thereon is void as against every purchaser or encumbrancer for value of the same property or the rents or profits thereof.

History: **En. Sec. 1, p. 492, Bannack Stat.; re-en. Sec. 1, p. 392, Cod. Stat. 1871; re-en. Sec. 155, 5th Div. Rev. Stat. 1879; re-en. Sec. 212, 5th Div. Comp. Stat. 1887; amd. Sec. 1650, Civ. C. 1895; re-en. Sec. 4688, Rev. C. 1907; re-en. Sec. 6939, R.C.M. 1921; Cal. Civ. C. Sec. 1227; Field Civ. C. Sec. 535; re-en. Sec. 6939, R.C.M. 1935; R.C.M. 1947, 29-201.**

70-20-402. Instrument not void as to purchaser with notice — exception. No instrument is to be avoided under 70-20-401 in favor of a subsequent purchaser or encumbrancer having notice thereof at the time his purchase was made or his lien acquired unless the person in whose favor the instrument was made was a privy to the fraud intended.

History: En. Sec. 2, p. 492, Bannack Stat.; re-en. Sec. 2, p. 392, Cod. Stat. 1871; re-en. Sec. 156, 5th Div. Rev. Stat. 1879; re-en. Sec. 213, 5th Div. Comp. Stat. 1887; amd. Sec. 1651, Civ. C. 1895; re-en. Sec. 4689, Rev. C. 1907; re-en. Sec. 6940, R.C.M. 1921; Cal. Civ. C. Sec. 1228; Field Civ. C. Sec. 536; re-en. Sec. 6940, R.C.M. 1935; R.C.M. 1947, 29-202.

70-20-403. Grant by person with power to revoke — power executed. (1) Where a power to revoke or modify an instrument affecting the title to or enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or encumbrancer for value operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or encumbrancer.

(2) Where a person having a power of revocation, within the provisions of subsection (1) is not entitled to execute it until after the time at which he makes such a grant or charge as described in that subsection, the power is deemed to be executed as soon as he is entitled to execute it.

History: (1)En. Sec. 3, p. 492, Bannack Stat.; re-en. Sec. 3, p. 392, Cod. Stat. 1871; re-en. Sec. 157, 5th Div. Rev. Stat. 1879; re-en. Sec. 214, 5th Div. Comp. Stat. 1887; amd. Sec. 1652, Civ. C. 1895; re-en. Sec. 4690, Rev. C. 1907; re-en. Sec. 6941, R.C.M. 1921; Cal. Civ. C. Sec. 1229; Field Civ. C. Sec. 537; re-en. Sec. 6941, R.C.M. 1935; Sec. 29-203, R.C.M. 1947; (2)En. Sec. 1653, Civ. C. 1895; re-en. Sec. 4691, Rev. C. 1907; re-en. Sec. 6942, R.C.M. 1921; Cal. Civ. C. Sec. 1230; Field Civ. C. Sec. 538; re-en. Sec. 6942, R.C.M. 1935; Sec. 29-204, R.C.M. 1947; R.C.M. 1947, 29-203, 29-204.

70-20-404. Purchaser in good faith not affected. The rights of a purchaser or encumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this part.

History: En. Sec. 1654, Civ. C. 1895; re-en. Sec. 4692, Rev. C. 1907; re-en. Sec. 6943, R.C.M. 1921; Field Civ. C. Sec. 539; re-en. Sec. 6943, R.C.M. 1935; R.C.M. 1947, 29-205.

70-20-405. Other provisions on unlawful transfers — where found. Other provisions concerning unlawful transfers are contained in Title 31, chapter 2, part 3, concerning the special relations of debtor and creditor.

History: En. Sec. 1655, Civ. C. 1895; re-en. Sec. 4693, Rev. C. 1907; re-en. Sec. 6944, R.C.M. 1921; Cal. Civ. C. Sec. 1231; Field Civ. C. Sec. 541; re-en. Sec. 6944, R.C.M. 1935; R.C.M. 1947, 29-206; amd. Sec. 10, Ch. 115, L. 1979.

CHAPTER 21

RECORDING TRANSFERS AND OTHER TRANSACTIONS RELATING TO REAL PROPERTY

Part 1 — General Provisions

70-21-101. Instrument defined — abstract.
70-21-102. Unrecorded instruments valid between parties.
70-21-103. Unrecorded deeds — to whom belong.
70-21-104. Removal of records prohibited — exceptions.

Part 2 — Recording—Procedure

70-21-201. What may be recorded — recording copy in another county.
70-21-202. Certain transfers in trust — mortgages — when to be recorded.
70-21-203. Acknowledgment of instruments required — exceptions.
70-21-204. Proof of handwriting acceptable for recording — when.
70-21-205. Acknowledgment unnecessary for recording judgments.
70-21-206. Recording of return of sale under court decree.
70-21-207. Letters patent and other federal and state documents — recording without acknowledgment.
70-21-208. In what county to be recorded.
70-21-209. When instrument considered recorded.
70-21-210. Clerk to endorse fee.
70-21-211. Record books to be separate.
70-21-212. Other duties of recorder — where found.

Part 3 — Effect of Recording

70-21-301. Conveyance defined.
70-21-302. Recording as constructive notice — effect of recording copy in other county.
70-21-303. After-acquired interest — effect on notice.
70-21-304. Conveyance void as against other conveyance recorded first.
70-21-305. Abstract of conveyance — effect of recording.
70-21-306. Recording judgments to impart notice.
70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided.
70-21-308. Power of attorney contained in recorded instrument — how revoked.
70-21-309. Validation of conveyances recorded after defective execution — notice imparted.
70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted.

Part 1

General Provisions

70-21-101. Instrument defined — abstract. For the purposes of Title 1, chapter 5, parts 1 through 3; part 2 of this chapter; and 70-21-310, the word instrument shall include an abstract of an instrument which shall be executed and acknowledged or proved by all parties executing the abstracted document and contains:

(1) the names and addresses of the parties thereto;
(2) a description of the real property affected;
(3) a statement that this is an abstract of another document;
(4) a short statement of the effect of the document abstracted;
(5) the name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person.

History: En. Sec. 2, Ch. 218, L. 1971; R.C.M. 1947, 73-101.1.

70-21-102. Unrecorded instruments valid between parties. An unrecorded instrument is valid as between the parties and those who have notice thereof.

History: En. Sec. 1644, Civ. C. 1895; re-en. Sec. 4687, Rev. C. 1907; re-en. Sec. 6938, R.C.M. 1921; Cal. Civ. C. Sec. 1217; re-en. Sec. 6938, R.C.M. 1935; R.C.M. 1947, 73-205.

70-21-103. Unrecorded deeds — to whom belong. Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom, for the time being, such title may be vested and pass with the title.

History: En. Sec. 1373, Civ. C. 1895; re-en. Sec. 4568, Rev. C. 1907; re-en. Sec. 6815, R.C.M. 1921; Cal. Civ. C. Sec. 994; Field Civ. C. Sec. 438; re-en. Sec. 6815, R.C.M. 1935; R.C.M. 1947, 67-1113.

70-21-104. Removal of records prohibited — exceptions. The record of a conveyance of real property or any other record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

History: En. Sec. 3240, C. Civ. Proc. 1895; re-en. Sec. 7953, Rev. C. 1907; re-en. Sec. 10597, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1950; re-en. Sec. 10597, R.C.M. 1935; R.C.M. 1947, 93-1101-20.

Part 2

Recording — Procedure

Part Cross-References

Documents subject to recording, 7-4-2613.

Procedure to record documents, 7-4-2617.

70-21-201. What may be recorded — recording copy in another county. (1) Any instrument or judgment affecting the title to or possession of real property may be recorded under this part.

(2) When any instrument or judgment affecting the title to or possession of real property situated in more than one county in this state has been recorded in either of such counties, a copy thereof, certified to by the county clerk of the county in which it has been recorded, may be recorded in any other county in this state wherein any portion of the real property affected by such instrument or judgment is situated, and such records will have the same effect as if the original instrument or judgment had been so recorded.

History: En. Sec. 1570, Civ. C. 1895; re-en. Sec. 4643, Rev. C. 1907; amd. Sec. 1, Ch. 28, L. 1919; re-en. Sec. 6890, R.C.M. 1921; Cal. Civ. C. Sec. 1158; Field Civ. C. Sec. 508; re-en. Sec. 6890, R.C.M. 1935; R.C.M. 1947, 73-101.

Cross-References

Documents subject to recording, 7-4-2613.

70-21-202. Certain transfers in trust — mortgages — when to be recorded. Transfers of property in trust for the benefit of creditors and transfers or liens on property by way of mortgage or abstract of such document are required to be recorded in the cases specified in Title 31, chapter 2, on the special relation of debtor and creditor and Title 71 on mortgages, respectively.

History: En. Sec. 1575, Civ. C. 1895; re-en. Sec. 4648, Rev. C. 1907; re-en. Sec. 6895, R.C.M. 1921; Cal. Civ. C. Sec. 1164; Field Civ. C. Sec. 511; re-en. Sec. 6895, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1971; R.C.M. 1947, 73-107.

Cross-References

Recording of mortgages and assignments, 71-1-207.

70-21-203. Acknowledgment of instruments required — exceptions. Before an instrument can be recorded, unless it belongs to the class provided for in either 1-5-108, 1-5-109, 70-21-205, or 70-21-207, its execution must be acknowledged by the person executing it or, if executed by a corporation, by its president, vice-president, secretary or assistant secretary, or other person duly authorized by resolution by such corporation executing the same on behalf of the corporation or proved by a subscribing witness or as provided in 1-5-302 and 1-5-303 and the acknowledgment or proof certified in the manner prescribed by Title 1, chapter 5, parts 1 through 3.

History: En. Sec. 1573, Civ. C. 1895; re-en. Sec. 4646, Rev. C. 1907; re-en. Sec. 6893, R.C.M. 1921; Cal. Civ. C. Sec. 1161; Based on Field Civ. C. Sec. 509; amd. Sec. 1, Ch. 16, L. 1931; re-en. Sec. 6893, R.C.M. 1935; amd. Sec. 1, Ch. 170, L. 1937; R.C.M. 1947, 73-105.

70-21-204. Proof of handwriting acceptable for recording — when. An instrument proved and certified pursuant to 1-5-302 and 1-5-303 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

History: En. Sec. 1574, Civ. C. 1895; re-en. Sec. 4647, Rev. C. 1907; re-en. Sec. 6894, R.C.M. 1921; Cal. Civ. C. Sec. 1162; Field Civ. C. Sec. 510; re-en. Sec. 6894, R.C.M. 1935; R.C.M. 1947, 73-106.

70-21-205. Acknowledgment unnecessary for recording judgments. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

History: En. Sec. 1571, Civ. C. 1895; re-en. Sec. 4644, Rev. C. 1907; re-en. Sec. 6891, R.C.M. 1921; Cal. Civ. C. Sec. 1159; re-en. Sec. 6891, R.C.M. 1935; R.C.M. 1947, 73-102.

70-21-206. Recording of return of sale under court decree. Where real estate is sold under a decree of court, return of such sale shall be made and filed in the office of the clerk of court. The clerk shall record the return so made the same as if it were to an execution wherein a levy upon real estate had been made, provided that where the return contains a true copy of the decree of court under which such sale was made, the clerk shall record all of the return except such copy of the decree and, in lieu of recording such copy, shall insert in the record the following:

"The original judgment and decree, the true copy which is set forth in this return, is recorded in judgment book ...., at pages .... to ...., inclusive, thereof."

History: En. Sec. 1, Ch. 42, L. 1927; re-en. Sec. 6891.1, R.C.M. 1935; R.C.M. 1947, 73-103.

70-21-207. Letters patent and other federal and state documents — recording without acknowledgment. Letters patent from the United

States or from the state of Montana or other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States or the state of Montana which evidence title to land or affect the title thereof, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost or are beyond the control of any party deraigning title therefrom or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original for title or for evidence until the original letters patent be recorded.

History: En. Sec. 1572, Civ. C. 1895; re-en. Sec. 4645, Rev. C. 1907; re-en. Sec. 6892, R.C.M. 1921; Cal. Civ. C. Sec. 1160; re-en. Sec. 6892, R.C.M. 1935; amd. Sec. 1, Ch. 148, L. 1957; R.C.M. 1947, 73-104.

70-21-208. In what county to be recorded. Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

History: En. Sec. 1590, Civ. C. 1895; re-en. Sec. 4650, Rev. C. 1907; re-en. Sec. 6898, R.C.M. 1921; Cal. Civ. C. Sec. 1169; Based on Field Civ. C. Sec. 512; re-en. Sec. 6898, R.C.M. 1935; R.C.M. 1947, 73-110.

70-21-209. When instrument considered recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the county clerk's office with the proper officer for record.

History: En. Sec. 1591, Civ. C. 1895; re-en. Sec. 4651, Rev. C. 1907; re-en. Sec. 6899, R.C.M. 1921; Cal. Civ. C. Sec. 1170; Based on Field Civ. C. Sec. 513; re-en. Sec. 6899, R.C.M. 1935; R.C.M. 1947, 73-111.

70-21-210. Clerk to endorse fee. The county clerk must in all cases endorse the amount of his fee for recording on the instrument recorded.

History: En. Sec. 1576, Civ. C. 1895; re-en. Sec. 4649, Rev. C. 1907; re-en. Sec. 6896, R.C.M. 1921; Cal. Civ. C. Sec. 1165; re-en. Sec. 6896, R.C.M. 1935; R.C.M. 1947, 73-108.

70-21-211. Record books to be separate. Grants absolute in terms are to be recorded in one set of books and mortgages and securities in the nature of mortgages in another.

History: En. Sec. 1592, Civ. C. 1895; re-en. Sec. 4652, Rev. C. 1907; re-en. Sec. 6900, R.C.M. 1921; Cal. Civ. C. Sec. 1171; re-en. Sec. 6900, R.C.M. 1935; R.C.M. 1947, 73-112.

70-21-212. Other duties of recorder — where found. The duties of county clerks in respect to recording instruments are prescribed by Title 7, chapter 4, part 26.

History: En. Sec. 1593, Civ. C. 1895; re-en. Sec. 4653, Rev. C. 1907; re-en. Sec. 6901, R.C.M. 1921; Cal. Civ. C. Sec. 1172; Based on Field Civ. C. Sec. 514; re-en. Sec. 6901, R.C.M. 1935; R.C.M. 1947, 73-113.

Part 3

Effect of Recording

70-21-301. Conveyance defined. The term “conveyance”, as used in 70-21-302 through 70-21-304, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or encumbered or by which the title to real property may be affected, except wills.

History: En. Sec. 1642, Civ. C. 1895; re-en. Sec. 4685, Rev. C. 1907; re-en. Sec. 6936, R.C.M. 1921; Cal. Civ. C. Sec. 1215; Based on Field Civ. C. Sec. 531; re-en. Sec. 6936, R.C.M. 1935; R.C.M. 1947, 73-203.

70-21-302. Recording as constructive notice — effect of recording copy in other county. (1) Every conveyance of real property acknowledged or proved and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

(2) A certified copy of any such recorded conveyance may be recorded in any other county, and when so recorded the record thereof shall have the same force and effect as though it was of the original conveyance.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-303. After-acquired interest — effect on notice. Further, every conveyance and/or encumbrance of real property acknowledged or proved and certified and recorded as prescribed by law and which is executed by one who thereafter acquires an interest in the real property by a conveyance which said conveyance is constructive notice as aforesaid is, from the time such latter conveyance is filed with the county clerk for record, constructive notice of the contents of such earlier conveyance and/or encumbrance to subsequent takers, purchasers, mortgagees, or other encumbrancers or transferees.

History: En. Sec. 259, 5th Div. Comp. Stat. 1887; re-en. Sec. 1640, Civ. C. 1895; re-en. Sec. 4683, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1921; re-en. Sec. 6934, R.C.M. 1921; Cal. Civ. C. Secs. 1213, 1218; re-en. Sec. 6934, R.C.M. 1935; amd. Sec. 1, Ch. 147, L. 1967; R.C.M. 1947, 73-201(part).

70-21-304. Conveyance void as against other conveyance recorded first. Every conveyance of real property, other than a lease for a term not exceeding 1 year, is void against any subsequent purchaser or encumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property or any part thereof in good faith and for a valuable consideration whose conveyance is first duly recorded.

History: En. Sec. 260, 5th Div. Comp. Stat. 1887; re-en. Sec. 1641, Civ. C. 1895; re-en. Sec. 4684, Rev. C. 1907; re-en. Sec. 6935, R.C.M. 1921; Cal. Civ. C. Sec. 1214; Based on Field Civ. C. Sec. 530; re-en. Sec. 6935, R.C.M. 1935; R.C.M. 1947, 73-202.

70-21-305. Abstract of conveyance — effect of recording. An abstract of a conveyance or encumbrance of real property, which abstract is acknowledged or proved and certified and recorded as prescribed by law, shall have the same effect for all purposes of this part as if the conveyance or encumbrance of real property had been acknowledged or proved and certified and recorded as prescribed by law.

History: En. Sec. 3, Ch. 218, L. 1971; R.C.M. 1947, 73-201.1.

70-21-306. Recording judgments to impart notice. Every certified copy of a judgment of partition or any other judgment, filed and recorded as provided in 7-4-2613, from the time of filing the same for record imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lienholders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant, or transfer.

History: En. Sec. 4415, Pol. C. 1895; re-en. Sec. 3036, Rev. C. 1907; re-en. Sec. 4802, R.C.M. 1921; Cal. Pol. C. Sec. 4239; re-en. Sec. 4802, R.C.M. 1935; R.C.M. 1947, 16-2908.

70-21-307. Effect of conveyance to grantee as trustee when no trust conditions provided. Any conveyance of real property hereafter placed of record in any office of any county clerk and recorder in which the name of the grantee is followed by the word "trustee", "as trustee", or some similar fiduciary term and in which no terms and conditions of such purported trust or any limitation on the power of the grantee to convey shall be set forth so that any person dealing with such real property could learn therefrom what, if any, limitation exists upon the authority of the grantee with regard to the reconveyance or encumbrance of such property shall be considered as though such property had been conveyed to such grantee without any limitation upon his authority to reconvey or encumber as fully as though the word "trustee", "as trustee", or any equivalent fiduciary expression had not been used in connection with his name, and the use of the word "trustee" or "as trustee" or any equivalent fiduciary expression purporting a trust contained in such conveyance shall have no force or effect in charging any purchaser or encumbrancer thereof with notice of any limitation of power on the part of the person so named as trustee to deal with such lands as his own.

History: En. Sec. 1, Ch. 64, L. 1943; R.C.M. 1947, 73-206.

70-21-308. Power of attorney contained in recorded instrument — how revoked. No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also acknowledged or proved, certified, and recorded in the same office in which the instrument containing the power was recorded.

History: En. Sec. 1643, Civ. C. 1895; re-en. Sec. 4686, Rev. C. 1907; re-en. Sec. 6937, R.C.M. 1921; Cal. Civ. C. Sec. 1216; Based on Field Civ. C. Sec. 532; re-en. Sec. 6937, R.C.M. 1935; R.C.M. 1947, 73-204.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

70-21-309. Validation of conveyances recorded after defective execution — notice imparted. (1) Any instrument affecting real property, provided no action is pending as of October 1, 1991, to set such instrument aside, which was, previous to January 1, 1991, recorded in the office of the county clerk and recorder shall be deemed to impart after that date notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any technical defect, omission, or informality in the execution of the instrument or in the certificate of acknowledgment thereof or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to January 1, 1991.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded.

History: En. Sec. 1, Ch. 147, L. 1973; R.C.M. 1947, 73-213; amd. Sec. 1, Ch. 476, L. 1981; amd. Sec. 2, Ch. 296, L. 1983; amd. Sec. 1, Ch. 284, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in three places, substituted "1991" for "1983".

70-21-310. Validation of recorded instruments omitting address of grantee — notice imparted. (1) Any deed, mortgage, or assignment of mortgage which was, previous to July 1, 1931, copied into the proper book kept in the office of the county clerk and recorder shall be deemed to impart, after July 1, 1931, notice of its contents to subsequent purchasers and encumbrancers notwithstanding the omission therefrom of the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be; and all such instruments recorded before July 1, 1931, which do not contain the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, shall be valid and shall have the same force and effect as though the post-office address of such grantee, mortgagee, or assignee of the mortgagee were contained therein; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to July 1, 1931.

(2) Duly certified copies of the record of any such instrument may be read in evidence with like effect as certified copies of instruments duly recorded containing the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be.

History: En. Sec. 1, Ch. 37, L. 1931; re-en. Sec. 6933.1, R.C.M. 1935; R.C.M. 1947, 39-132.

CHAPTER 22

CORNER RECORDATION ACT
SURVEYS AND COORDINATES

Part 1 — Corner Recordation Act

70-22-101. Short title.
70-22-102. Purpose.
70-22-103. Definitions.
70-22-104. Filing of corner record required.
70-22-105. Filing permitted as to any corner or accessory.

70-22-106. Filing of records on corners established before effective date.
70-22-107. Form and contents of record — board to prescribe.
70-22-108. Corner records to be certified.
70-22-109. Duties of county clerk.
70-22-110. Surveyor to rehabilitate monument.

Part 2 — Montana Coordinate System

70-22-201. Coordinate systems adopted — designation — division of state into zones.
70-22-202. Designation of system by zone.
70-22-203. Use of x- and y-coordinates.
70-22-204. Description of location.
70-22-205. Technical description of zones.
70-22-206. Conformity to standards required for use of coordinates in recorded instrument.
70-22-207. Use of term Montana coordinate system limited.
70-22-208. Public land survey description to prevail.
70-22-209. Purchaser or mortgagee not required to rely on description using systems.
70-22-210. Limit on use of Montana coordinate system NAD 27.

Part 1

Corner Recordation Act

70-22-101. Short title. This part may be cited as the "Corner Recordation Act of Montana".

History: En. Sec. 1, Ch. 202, L. 1963; R.C.M. 1947, 67-2001.

70-22-102. Purpose. It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963; R.C.M. 1947, 67-2002.

70-22-103. Definitions. Except where the context indicates a different meaning, terms used in this part shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal

description for issuing a patent for the land to a private person from the United States government.

(4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying.

(9) The "board" is the board of professional engineers and professional land surveyors, provided for in 2-15-1873.

History: En. Sec. 3, Ch. 202, L. 1963; amd. Sec. 320, Ch. 350, L. 1974; R.C.M. 1947, 67-2003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 73, Ch. 83, L. 1989.

70-22-104. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal, and file with the county clerk and recorder of the county where the corner is situated a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, reestablished, monumented, remonumented, restored, rehabilitated, perpetuated, or used as control in any survey by such surveyor and within 90 days thereafter unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this part.

History: En. Sec. 4, Ch. 202, L. 1963; R.C.M. 1947, 67-2004.

70-22-105. Filing permitted as to any corner or accessory. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument, or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963; R.C.M. 1947, 67-2005.

70-22-106. Filing of records on corners established before effective date. Corner records may be filed concerning corners established, reestablished, or restored before July 1, 1963.

History: En. Sec. 10, Ch. 202, L. 1963; R.C.M. 1947, 67-2010.

70-22-107. Form and contents of record — board to prescribe. The board shall by regulation provide and prescribe the information which shall be necessary to be included in the corner record, and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963; R.C.M. 1947, 67-2006.

70-22-108. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana, the certificate may be signed by the survey party chief making the survey and approved, signed, and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963; R.C.M. 1947, 67-2009.

70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed shall be placed by the clerk near that same corner on a cross-index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee.

History: En. Sec. 7, Ch. 202, L. 1963; R.C.M. 1947, 67-2007; amd. Sec. 1, Ch. 143, L. 1981.

70-22-110. Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963; R.C.M. 1947, 67-2008.

Part 2

Montana Coordinate System

70-22-201. Coordinate systems adopted — designation — division of state into zones. (1) The North American datum systems of plane coordinates that have been established by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) or a successor for defining and stating the positions or locations of points on the surface of the earth within the state of Montana are hereafter to be known and designated as the "Montana coordinate system NAD 27" and the "Montana coordinate system NAD 83".

(2) For the purpose of the use of the Montana coordinate system NAD 27, the state is divided into a north zone and a central zone and a south zone as provided in subsections (3) through (5).

(3) The area now included in the following counties shall constitute the north zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

(4) The area now included in the following counties shall constitute the central zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, McCone, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

(5) The area now included in the following counties shall constitute the south zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

(6) For the purpose of the use of the Montana coordinate system NAD 83, the state is a single zone.

History: En. Sec. 1, Ch. 232, L. 1965; amd. Sec. 1, Ch. 73, L. 1975; R.C.M. 1947, 67-2011; amd. Sec. 1, Ch. 137, L. 1987.

70-22-202. Designation of system by zone. (1) As established for use in the north zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, north zone".

(2) As established for use in the central zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, central zone".

(3) As established for use in the south zone, the Montana coordinate system NAD 27 shall be named and in any land description in which it is used it shall be designated the "Montana coordinate system NAD 27, south zone".

History: En. Sec. 2, Ch. 232, L. 1965; R.C.M. 1947, 67-2012; amd. Sec. 2, Ch. 137, L. 1987.

70-22-203. Use of x- and y-coordinates. (1) For the Montana coordinate system NAD 27, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the appropriate zone of this system shall consist of two distances expressed in terms of a United States survey foot and decimals of a foot.

(2) For the Montana coordinate system NAD 83, the plane coordinate values for a point on the earth's surface used to express the geographic position or location of such point in the zone shall consist of two distances expressed in either meters and decimals of a meter or in feet and decimals of a foot. The international conversion value (1 foot equals 0.3048 meters exactly) shall be used. The unit of measure shall be clearly stated when the coordinate values are expressed.

(3) One of the distances used to express a position or location, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey or its successors and whose plane coordinates have been computed on the systems designated by this part.

Any such station may be used for establishing a survey connection to either Montana coordinate system.

History: En. Sec. 3, Ch. 232, L. 1965; R.C.M. 1947, 67-2013; amd. Sec. 3, Ch. 137, L. 1987.

70-22-204. Description of location. (1) For the purposes of describing the location of any survey station in Montana, it is considered a complete, legal, and satisfactory description of such location to give the position of the survey station on the system of plane coordinates designated in this part.

(2) When any tract of land to be defined by a single description extends from one into another of the NAD 27 coordinate zones, the positions of all points on its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965; R.C.M. 1947, 67-2014; amd. Sec. 4, Ch. 137, L. 1987.

70-22-205. Technical description of zones. For purposes of more precisely defining the Montana coordinate systems NAD 27 and NAD 83, the following description by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) is adopted:

(1) The Montana coordinate system NAD 27, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47°51' and 48°43', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109°30' west of Greenwich and the parallel 47°00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) The Montana coordinate system NAD 27, central zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 46°27' and 47°53', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109°30' west of Greenwich and the parallel 45°50' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(3) The Montana coordinate system NAD 27, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 44°52' and 46°24', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109°30' west of Greenwich and the parallel 44°00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(4) The Montana coordinate system NAD 83 is a Lambert conformal conic projection of the GRS 80 (Geodetic Reference System 1980) ellipsoid, having standard parallels of north latitudes 45°00' and 49°00', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 109°30' west of Greenwich and the parallel 44°15' north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

History: En. Sec. 5, Ch. 232, L. 1965; amd. Sec. 2, Ch. 73, L. 1975; R.C.M. 1947, 67-2015; amd. Sec. 5, Ch. 137, L. 1987.

70-22-206. Conformity to standards required for use of coordinates in recorded instrument. No coordinates based on the Montana coordinate systems NAD 27 and NAD 83 purporting to define the position of a point on a land boundary shall be presented to be recorded in any public land records or deed records unless the coordinates have been established in conformity with the national prescribed standards for third-order class II horizontal control surveys and provided that these surveys have been tied to or originated from monumented first- or second-order horizontal control stations that are adjusted to and published in the national network of geodetic control and are within 3 miles of said land boundaries. Standards of accuracy and specifications apply for first-, second-, and third-order geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce or its successors. Publication of the existing control stations or acceptance with intent to publish newly established control stations by the national ocean survey/national geodetic survey constitutes evidence of adherence to FGCC specifications.

History: En. Sec. 6, Ch. 232, L. 1965; R.C.M. 1947, 67-2016; amd. Sec. 6, Ch. 137, L. 1987.

70-22-207. Use of term Montana coordinate system limited. The use of the term "Montana coordinate system NAD 27 north, central, or south zone" or "Montana coordinate system NAD 83" on any map, report of survey, or other document shall be limited to coordinates based on the Montana coordinate systems as defined in this part.

History: En. Sec. 7, Ch. 232, L. 1965; R.C.M. 1947, 67-2017; amd. Sec. 7, Ch. 137, L. 1987.

70-22-208. Public land survey description to prevail. Whenever coordinates based on the Montana coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record.

History: En. Sec. 8, Ch. 232, L. 1965; R.C.M. 1947, 67-2018; amd. Sec. 8, Ch. 137, L. 1987.

70-22-209. Purchaser or mortgagee not required to rely on description using systems. Nothing contained in this part shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana coordinate systems.

History: En. Sec. 9, Ch. 232, L. 1965; R.C.M. 1947, 67-2019; amd. Sec. 9, Ch. 137, L. 1987.

70-22-210. Limit on use of Montana coordinate system NAD 27. The Montana coordinate system NAD 27 north, central, and south zone may not be used after July 1, 1993; the Montana coordinate system NAD 83 is the sole system to be used after this date.

History: En. Sec. 10, Ch. 137, L. 1987.

CHAPTER 23

UNIT OWNERSHIP ACT — CONDOMINIUMS

Part 1 — General Provisions

70-23-101. Short title.
70-23-102. Definitions.
70-23-103. Applicability — submission by declaration required.

Part 2 — Regulation of Unit Sales Prior to Construction

70-23-201. Disposition of funds from purchase or lease of unit prior to completion of construction.
70-23-202. Notice of intention to sell by developer — fees.
70-23-203. Examination of project by department after notice of intent to sell — report.
70-23-204. Refund of purchaser's funds for change in building plans — final report.
70-23-205. Final report prior to completion of project — supplementary report.
70-23-206. No binding contract until purchaser has received final report.

Part 3 — Creation—Declaration and Bylaws

70-23-301. Contents of declaration.
70-23-302. Preliminary declaration.
70-23-303. Name of property — similarity prohibited.
70-23-304. Declaration to be approved by department of revenue before recording.
70-23-305. Recording of declaration.
70-23-306. Floor plans recorded with declaration — certification.
70-23-307. Bylaws — adoption, recording, and amendment.
70-23-308. Contents of bylaws.

Part 4 — Nature of the Ownership Interest

70-23-401. Property status of the unit.
70-23-402. Exclusive ownership and possession of unit — joint ownership.
70-23-403. Common elements — undivided interest of unit owner.
70-23-404. Common elements — undivided interest to remain attached to unit.
70-23-405. Common elements to remain undivided — partition prohibited.

Part 5 — Rights and Duties Incidental to Unit Ownership

70-23-501. Common profits and expenses.
70-23-502. Certain work on unit by owner prohibited.
70-23-503. Common elements — use by unit owner.
70-23-504. Maintenance and improvement of common elements.
70-23-505. Abandonment or waiver of use not to effect exemption.
70-23-506. Compliance with bylaws, rules, and covenants required — action.

Part 6 — Conveyances, Liens, and Common Expenses

70-23-601. Contents of deed or lease of unit.
70-23-602. Liens to be satisfied or released at time of first conveyance.
70-23-603. Lien allowable against unit not against the property.
70-23-604. Construction or materialman's lien — no effect on nonconsenting owner — exception.
70-23-605. Lien effective against two or more units — release from.
70-23-606. Records of receipts and expenditures affecting common elements — inspection.
70-23-607. Claim for common expenses — priority of lien — contents — recording.
70-23-608. Foreclosure of lien under claim for common expenses — action without foreclosure.
70-23-609. Foreclosure on unit — payment of rent — purchase of unit by manager.
70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses.

70-23-611. Joint liability of grantor and grantee for unpaid common expenses.
70-23-612. Insurance of building — premiums as common expenses.
70-23-613. Disclosure by seller — seller to furnish documents — delay period.

Part 7 — Taxation and Exemptions
(Repealed. Sec. 4, Ch. 452, L. 1985)

Part 8 — Removal of Property From Unit Ownership Act

70-23-801. Removal from chapter — recorded instrument — consent of lienholders.
70-23-802. Obsolete property — restoration or sale — removal from chapter.
70-23-803. Damage to property — decision not to repair or rebuild — removal from chapter.
70-23-804. Effect of removal — ownership in common — liens.
70-23-805. Effect of removal — subject to partition — sale.
70-23-806. Removal no bar to resubmission.

Part 9 — Actions and Process

70-23-901. Actions — service of process.
70-23-902. Change of agent for service of process.

Part 10 — Enforcement and Penalty

70-23-1001. Investigation by department — injunction.
70-23-1002. Penalty.

Chapter Cross-References

Undivided interest in common elements of condominium project — assessment, 15-8-511.

Common elements serving residential or commercial development — assessment, 15-8-512.

Montana Timeshare Act, Title 37, ch. 53.

Part 1

General Provisions

70-23-101. Short title. This chapter may be cited as the "Unit Ownership Act".

History: En. Sec. 1, Ch. 120, L. 1965; R.C.M. 1947, 67-2301.

70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

(7) "Department" means the department of commerce.

(8) "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion thereof included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

(9) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

(10) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(11) "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

(12) "Project" means a real estate condominium project, a plan whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

(13) "Property" means the land, all buildings, improvements, and structures thereon and all easements, rights, and appurtenances belonging thereto which are submitted to the provisions of this chapter.

(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(15) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16) "Unit designation" means the number, letter, or combination thereof designating a unit in the declaration.

(17) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit shall be considered a unit owner.

History: En. Sec. 2, Ch. 120, L. 1965; amd. Sec. 1, Ch. 150, L. 1973; R.C.M. 1947, 67-2302; amd. Sec. 2, Ch. 274, L. 1981.

70-23-103. Applicability — submission by declaration required. In order to submit any property to the provisions of this chapter, the sole owner or sole lessee or all of the owners or all of the lessees thereof shall execute, acknowledge, and record a declaration in the office of the recording officer of the county in which the property is located. The declaration shall be executed in accordance with 70-23-301.

History: En. Sec. 3, Ch. 120, L. 1965; amd. Sec. 2, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.

Part 2

Regulation of Unit Sales Prior to Construction

Part Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

70-23-201. Disposition of funds from purchase or lease of unit prior to completion of construction. (1) If units are conveyed or leased prior to the completion of construction of the building within which such unit is located and all of the general common elements of the project (except those general common elements forming a part of a separate building enclosing other units) as set forth in the declaration filed pursuant to 70-23-301, all moneys from the sale of the units including any payments made on loan commitments from lending institutions shall be deposited in escrow by the developer in a fund with a bank, savings and loan association, or company authorized to do business in the state under an escrow arrangement.

(2) No disbursements may be made from such fund until the completion of the building and general common elements or until compliance with the provisions of 70-23-202 through 70-23-206, whichever comes first.

(3) If no disbursements are made until after the building and general common elements have been completed, the developer need not comply with 70-23-202 through 70-23-206.

(4) If 70-23-202 through 70-23-206 have been complied with, disbursements from such fund may be made from time to time to pay for construction costs of the building in proportion to the valuation of the work completed by the contractor as certified by a registered architect or registered professional engineer and for architectural, engineering, finance, and legal fees and for other incidental expenses of the condominium project as approved by the mortgagee. The balance of the moneys remaining in the fund shall be disbursed only upon completion of the building, free and clear of all construction and materialman's liens. The department may impose other restrictions relative to the retention and disbursement of the fund.

History: En. 67-2303.1 by Sec. 3, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.1.

70-23-202. Notice of intention to sell by developer — fees. (1) The developer of a project shall notify the department in writing prior to the time the project or units thereof are to be offered for sale.

(2) The notice of intention to sell shall fully disclose all material facts on a form prescribed by the department.

(3) The fee for filing the notice of intention is $50. For the inspection of the project and examination of the accounts and records of the developer, the department may require the developer to pay the costs thereof, not to exceed the sum of $100 for each day actually required to perform such duties, but in no event shall the total charges exceed the sum of $500.

History: En. 67-2303.2 by Sec. 4, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.2.

70-23-203. Examination of project by department after notice of intent to sell — report. (1) After receipt of the notice of intention to sell, the department shall inspect the project and examine the accounts and records of the developer.

(2) The department shall make a report of its inspection which shall contain all material facts reasonably available and which shall be on file and available for public inspection in the office of the director.

(3) The department may issue a preliminary report if the notice of intention is incomplete in some respect but the department is satisfied that the report will adequately disclose all material facts which a prospective purchaser should consider and that adequate protection for purchasers' funds has been provided.

(4) A developer may not use a preliminary report to contract for the sale of a unit unless he files the notice of intention to sell, a specimen copy of the proposed contract of sale, and an executed copy of an escrow agreement with a depository in accordance with 70-23-201.

History: En. 67-2303.3 by Sec. 5, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.3.

70-23-204. Refund of purchaser's funds for change in building plans — final report. (1) The funds of any purchaser obtained prior to issuance of final reports shall be refunded if there is any change in the condominium building plans subsequent to execution of the contract requiring approval of a city or county officer having jurisdiction over issuance of permits for construction of buildings unless the purchaser's written acceptance of the specific change is obtained.

(2) Rights under contracts of sale of condominium units under a preliminary report are not enforceable against purchasers until purchasers have had a full opportunity to read the department's final report on the project and to obtain a refund of any moneys paid as well as a release from all obligations if the final report differs in any material respect from the preliminary report.

(3) If the final report is not issued within 1 year from the date of issuance of the preliminary report, purchasers are entitled to refund of all moneys paid by the purchasers thereunder without further obligation.

History: En. 67-2303.4 by Sec. 6, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.4; amd. Sec. 11, Ch. 115, L. 1979.

70-23-205. Final report prior to completion of project — supplementary report. (1) The department may not issue a final report prior to completion of construction of a project unless:

(a) there is filed with the department:

(i) a verified statement showing all costs involved in completing the project, including land, ground lease payments, and equipment lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, and other costs which must be paid on or before the completion of construction of the building;

(ii) a verified estimate of the time of completion of construction of the total project;

(iii) satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;

(iv) a copy of the executed construction contract;

(v) satisfactory evidence of a performance bond of not less than 100% of the cost of construction with a reliable surety company;

(vi) if purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the escrow fund required under 70-23-201 for financing construction, which shall expressly provide for:

(A) no disbursements by the escrow agent for payment of construction costs unless bills are submitted with the request for such disbursements which have been approved or certified for payment by the mortgagee or a financially disinterested person; and

(B) no disbursements from the balance of the escrow fund after payment of construction costs pursuant to subsection (A) until the escrow agent receives satisfactory evidence that all construction and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;

(b) the declaration provided for in 70-23-301 has been filed.

(2) If after a final report has been issued any circumstance occurs which would render the final report misleading as to purchasers or if the developer proposes to materially change the project, the developer shall stop all sales and immediately submit sufficient information to the department to enable it to issue a supplementary report describing the changes. Sales shall not resume until the supplementary report has been issued.

History: En. 67-2303.5 by Sec. 7, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.5.

70-23-206. No binding contract until purchaser has received final report. (1) The developer or any other person offering any unit in a condominium project prior to completion of its construction shall not enter into a binding contract or agreement for the sale or resale thereof until:

(a) a true copy of the department's final report thereon with all supplementary reports has been given to the prospective purchaser;

(b) the prospective purchaser has been given an opportunity to read the reports; and

(c) the prospective purchaser executes a receipt for the reports.

(2) Receipts taken for any report shall be kept on file in possession of the developer, subject to inspection at a reasonable time by the department for a period of 3 years from the date the receipt was taken.

History: En. 67-2303.6 by Sec. 8, Ch. 150, L. 1973; R.C.M. 1947, 67-2303.6.

Part 3

Creation — Declaration and Bylaws

70-23-301. Contents of declaration. A declaration shall contain:

(1) a description of the land, whether leased or in fee simple, on which the building is or is to be located;

(2) the name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units, and the principal materials of which it is constructed;

(3) the unit designation, location, approximate area of each unit, and any other data necessary for proper identification;

(4) a description of the general common elements and the percentage of the interest of each unit owner therein;

(5) a description of the limited common elements, if any, stating to which units their use is reserved and in what percentage;

(6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of such person which shall be within the county in which the property is located;

(8) any other details regarding the property that the person executing the declaration considers desirable.

History: En. Sec. 14, Ch. 120, L. 1965; amd. Sec. 11, Ch. 150, L. 1973; R.C.M. 1947, 67-2314.

70-23-302. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by 70-23-301 as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by 70-23-301.

History: En. Sec. 15, Ch. 120, L. 1965; R.C.M. 1947, 67-2315.

70-23-303. Name of property — similarity prohibited. No property shall bear a name using a word which is the same as, similar to, or pronounced the same as a word in the name of any other property or subdivision in the same county, except for the words "apartment", "motel", "building", "court", "place", or similar words.

History: En. Sec. 16, Ch. 120, L. 1965; R.C.M. 1947, 67-2316.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

70-23-304. Declaration to be approved by department of revenue before recording. Before a declaration may be recorded, it must be approved by the agent of the department of revenue in the county in which the property is located. No declaration shall be approved unless:

(1) the name is proper so as to comply with 70-23-303; and

(2) all taxes and assessments due and payable have been paid.

History: En. Sec. 17, Ch. 120, L. 1965; amd. Sec. 40, Ch. 391, L. 1973; R.C.M. 1947, 67-2317.

70-23-305. Recording of declaration. (1) When a declaration is made and approved as required, it must, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date of recording must be entered on the declaration.

(2) At the time of recording a declaration, the person offering it for record shall also file a copy, certified by the recording officer to be a true copy, with the department of revenue or its agent in the county in which the property is located.

(3) If the property is located in a city or town, a copy of the declaration only must also be filed with the city or town clerk at the time of recording.

History: En. Sec. 18, Ch. 120, L. 1965; amd. Sec. 41, Ch. 391, L. 1973; R.C.M. 1947, 67-2318; amd. Sec. 1, Ch. 85, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) requiring filing of a declaration of unit ownership with a city or town clerk if condominium property is located within a city or town; and made minor changes in style.

70-23-306. Floor plans recorded with declaration — certification. (1) Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit, including the unit designation, location and dimensions of each unit, and the common areas to which each has access.

(2) There shall be attached to the floor plans a statement of a registered architect, registered professional engineer, or registered professional land surveyor who has reviewed the floor plans, certifying that the plans are an accurate copy of the plans filed with and approved by the city and county officers having jurisdiction to issue building permits. If the plans do not include a verified statement by an architect, engineer, or surveyor that the

plans fully and accurately depict the layout, location, unit designation, and dimensions of each unit as built, there shall be recorded within 30 days from the date of completion of the building or from the date of the first occupancy of the building, whichever first occurs, an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered professional land surveyor certifying that the floor plans previously filed or being filed simultaneously with the amendment fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965; amd. Sec. 12, Ch. 150, L. 1973; R.C.M. 1947, 67-2319; amd. Sec. 1, Ch. 114, L. 1985.

Cross-References

Licensing of architects, Title 37, ch. 65, part 3.

Licensing of engineers and land surveyors, Title 37, ch. 67, part 3.

70-23-307. Bylaws — adoption, recording, and amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by 75% of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965; R.C.M. 1947, 67-2320.

70-23-308. Contents of bylaws. The bylaws shall provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102(10), that shall constitute a quorum;

(3) the election of a chairman, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for the expense thereof, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the

declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307.

History: **En. Sec. 21, Ch. 120, L. 1965; R.C.M. 1947, 67-2321.**

Part 4

Nature of the Ownership Interest

70-23-401. Property status of the unit. While the property is submitted to this chapter, a unit in the building may be individually conveyed, leased, or encumbered and may be the subject of ownership, possession, or sale and of all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: **En. Sec. 4, Ch. 120, L. 1965; amd. Sec. 9, Ch. 150, L. 1973; R.C.M. 1947, 67-2304.**

70-23-402. Exclusive ownership and possession of unit — joint ownership. (1) Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

(2) A unit may be jointly or commonly owned by more than one person.

History: **En. Sec. 5, Ch. 120, L. 1965; amd. Sec. 10, Ch. 150, L. 1973; R.C.M. 1947, 67-2305.**

70-23-403. Common elements — undivided interest of unit owner. (1) Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value.

(2) The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: **En. Sec. 6, Ch. 120, L. 1965; R.C.M. 1947, 67-2306.**

70-23-404. Common elements — undivided interest to remain attached to unit. The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

History: **En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(1).**

70-23-405. Common elements to remain undivided — partition prohibited. The common elements shall remain undivided, and no unit owner shall bring any action for partition or division of any part thereof except as provided in 70-23-805. Any convenant to the contrary is void.

History: **En. Sec. 7, Ch. 120, L. 1965; R.C.M. 1947, 67-2307(2).**

Part 5

Rights and Duties Incidental to Unit Ownership

70-23-501. Common profits and expenses. The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentage of undivided interest of each in the common elements.

History: **En. Sec. 8, Ch. 120, L. 1965; R.C.M. 1947, 67-2308.**

70-23-502. Certain work on unit by owner prohibited. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: **En. Sec. 9, Ch. 120, L. 1965; R.C.M. 1947, 67-2309.**

70-23-503. Common elements — use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended but may not hinder or encroach upon the lawful rights of the other unit owners.

History: **En. Sec. 10, Ch. 120, L. 1965; R.C.M. 1947, 67-2310.**

70-23-504. Maintenance and improvement of common elements. (1) The necessary work of maintenance, repair, and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair, or replacement of the common elements or to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: **En. Sec. 11, Ch. 120, L. 1965; R.C.M. 1947, 67-2311.**

70-23-505. Abandonment or waiver of use not to effect exemption. No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

History: **En. Sec. 12, Ch. 120, L. 1965; R.C.M. 1947, 67-2312.**

70-23-506. Compliance with bylaws, rules, and covenants required — action. Each unit owner shall comply with the bylaws and with the administrative rules adopted pursuant thereto and with the covenants, conditions, and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: **En. Sec. 13, Ch. 120, L. 1965; R.C.M. 1947, 67-2313.**

Part 6

Conveyances, Liens, and Common Expenses

70-23-601. Contents of deed or lease of unit. The deed or lease of a unit shall contain:

(1) a description of the land, the name of the property, and the recording index numbers and date of recording of the declaration;

(2) the unit designation of the unit;

(3) the use for which the unit is intended;

(4) the percentages of undivided interest in the common elements appertaining to the unit;

(5) any further details the grantor and grantee or lessor and lessee may consider desirable.

History: **En. Sec. 22, Ch. 120, L. 1965; amd. Sec. 13, Ch. 150, L. 1973; R.C.M. 1947, 67-2322.**

70-23-602. Liens to be satisfied or released at time of first conveyance. At the time of the first conveyance or lease of each unit following the recording of the declaration, every mortgage and other lien affecting such unit, including the undivided interest of the unit in the common elements, shall be paid and satisfied of record or the unit being conveyed or leased and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: **En. Sec. 23, Ch. 120, L. 1965; amd. Sec. 14, Ch. 150, L. 1973; R.C.M. 1947, 67-2323.**

Cross-References

Mortgages, Title 71, ch. 1.

Liens, Title 71, ch. 3.

70-23-603. Lien allowable against unit not against the property. Subsequent to recording a declaration and while the property remains subject to this chapter, no lien shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

History: **En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(1).**

Cross-References
Construction liens, Title 71, ch. 3, part 5.

70-23-604. Construction or materialman's lien — no effect on nonconsenting owner — exception. No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor, or subcontractor shall be the basis for the filing of a construction or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(2).

Cross-References
Construction liens, Title 71, ch. 3, part 5.

70-23-605. Lien effective against two or more units — release from. If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common element appertaining thereto not so released by payment, satisfaction, or discharge.

History: En. Sec. 24, Ch. 120, L. 1965; R.C.M. 1947, 67-2324(3).

70-23-606. Records of receipts and expenditures affecting common elements — inspection. (1) The manager shall keep detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

(2) Such records and the vouchers authorizing the payments and receipts for payments shall be available for examination at the manager's place of business by the unit owners at convenient hours of weekdays.

History: En. Sec. 25, Ch. 120, L. 1965; R.C.M. 1947, 67-2325; amd. Sec. 2, Ch. 385, L. 1983.

70-23-607. Claim for common expenses — priority of lien — contents — recording. (1) Whenever an association of unit owners acting through its manager furnishes to a unit any services, labor, or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses, and the lien shall be prior to all other liens or encumbrances upon the unit except:

(a) tax and assessment liens; and

(b) a first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing:

(a) a true statement of the account due for such common expenses after deducting all just credits and offsets;

(b) the name of the owner of the unit or reputed owner, if known;

(c) a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under Title 71, chapter 3, part 5. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965; R.C.M. 1947, 67-2326; amd. Sec. 15, Ch. 202, L. 1987.

70-23-608. Foreclosure of lien under claim for common expenses — action without foreclosure. (1) The proceedings to foreclose liens created by 70-23-607 shall conform as nearly as possible to the proceedings to foreclose liens created by Title 71, chapter 3, part 5. The lien may be enforced by the manager acting on behalf of the association of unit owners.

(2) An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965; R.C.M. 1947, 67-2327; amd. Sec. 16, Ch. 202, L. 1987.

70-23-609. Foreclosure on unit — payment of rent — purchase of unit by manager. (1) In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent.

(2) The manager acting on behalf of the unit owners shall have power, unless prohibited by the declaration, to bid on the unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965; R.C.M. 1947, 67-2328; amd. Sec. 6, Ch. 84, L. 1983.

70-23-610. Purchaser at foreclosure sale not totally liable for prior common expenses. Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such purchaser, his successors, and assigns shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners, including such purchaser, his successors, and assigns.

History: En. Sec. 29, Ch. 120, L. 1965; R.C.M. 1947, 67-2329.

70-23-611. Joint liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit, the grantee is jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser, the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case is not liable for nor is the unit when conveyed subject to a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

History: En. Sec. 30, Ch. 120, L. 1965; R.C.M. 1947, 67-2330; amd. Sec. 12, Ch. 115, L. 1979.

70-23-612. Insurance of building — premiums as common expenses. (1) The manager as trustee for the unit owners shall, if required by the declaration, the bylaws, or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit.

(2) The premiums for such insurance on the building are common expenses.

History: En. Sec. 31, Ch. 120, L. 1965; R.C.M. 1947, 67-2331.

70-23-613. Disclosure by seller — seller to furnish documents — delay period. (1) Whenever a person, corporation, or other legal entity constitutes a majority of the unit owners, the seller or his agent, prior to signing any buy-sell agreement, shall give to any person purchasing or expressing a desire to purchase one of the project units notice that:

(a) the seller or other person constitutes a majority of the unit owners;

(b) any bylaws and administrative regulations governing the operation of the development and the association, as adopted by the association, have been adopted by the seller or other person acting as a majority of the unit owners; and

(c) any change in the bylaws or administrative regulations occurring while the seller or other person constitutes a majority of the unit owners may be made only with the approval of the seller or other person constituting a majority of unit owners.

(2) Upon the request of any person purchasing or expressing a desire to purchase one of the project units, the seller or his agent shall furnish to that buyer or prospective buyer, prior to signing any buy-sell agreement, a copy of the Unit Ownership Act, the bylaws of the association, and any administrative regulations governing the operation of the project or the association.

(3) Any buy-sell agreement shall provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay the prospective purchaser may withdraw his offer without penalty.

History: En. Sec. 1, Ch. 385, L. 1983.

Part 7

Taxation and Exemptions (Repealed. Sec. 4, Ch. 452, L. 1985)

Part Compiler's Comments

Histories of Repealed Sections:

70-23-701. En. Sec. 40, Ch. 120, L. 1965; amd. Sec. 42, Ch. 391, L. 1973; R.C.M. 1947, 67-2340.

70-23-702. En. Sec. 41, Ch. 120, L. 1965; R.C.M. 1947, 67-2341.

70-23-703. En. Sec. 42, Ch. 120, L. 1965; amd. Sec. 43, Ch. 391, L. 1973; R.C.M. 1947, 67-2342.

Part 8

Removal of Property From Unit Ownership Act

70-23-801. Removal from chapter — recorded instrument — consent of lienholders. All of the unit owners may remove a property from the provisions of this chapter by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of this chapter.

History: En. Sec. 32, Ch. 120, L. 1965; R.C.M. 1947, 67-2332; amd. Sec. 3, Ch. 452, L. 1985.

70-23-802. Obsolete property — restoration or sale — removal from chapter. Ninety percent of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If 90% of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If 90% of the unit owners agree to sell the property, the property shall be considered removed from the provisions of this chapter.

History: En. Sec. 33, Ch. 120, L. 1965; R.C.M. 1947, 67-2333.

70-23-803. Damage to property — decision not to repair or rebuild — removal from chapter. If within 60 days after the date of the damage to or destruction of all or part of the property the association of unit owners does not decide to repair, reconstruct, or rebuild, the property shall be considered removed from the provisions of this chapter.

History: En. Sec. 34, Ch. 120, L. 1965; R.C.M. 1947, 67-2334.

70-23-804. Effect of removal — ownership in common — liens. If the property is removed from the provisions of this chapter, as provided by 70-23-801 through 70-23-803, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: En. Sec. 35, Ch. 120, L. 1965; R.C.M. 1947, 67-2335.

70-23-805. Effect of removal — subject to partition — sale. If the property is removed from the provisions of this chapter, as provided in 70-23-801 through 70-23-803, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: En. Sec. 36, Ch. 120, L. 1965; R.C.M. 1947, 67-2336.

70-23-806. Removal no bar to resubmission. The removal of the property from the provisions of this chapter shall in no way bar its resubmission.

History: En. Sec. 37, Ch. 120, L. 1965; R.C.M. 1947, 67-2337.

Part 9

Actions and Process

Part Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

70-23-901. Actions — service of process. (1) Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit.

(2) Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process.

(3) At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of $10 which shall be a taxable disbursement.

History: **En. Sec. 38, Ch. 120, L. 1965; R.C.M. 1947, 67-2338.**

70-23-902. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in 70-23-901, it shall record an amendment to the declaration. The amendment shall be certified by the presiding officer and the secretary of the association of unit owners and shall state the name of the successor with his residence or place of business as required by 70-23-301(7) and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: **En. Sec. 39, Ch. 120, L. 1965; R.C.M. 1947, 67-2339.**

Part 10

Enforcement and Penalty

70-23-1001. Investigation by department — injunction. If the department has satisfactory evidence to indicate that any person has violated any provision of this chapter, it may conduct an investigation and bring an action for injunction.

History: **En. Sec. 15, Ch. 150, L. 1973; R.C.M. 1947, 67-2343.**

Cross-References

Injunctions, Title 27, ch. 19.

70-23-1002. Penalty. Any person who violates any provision of this chapter or any rule of the department under such sections is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or by imprisonment for not more than 1 year, or both.

History: **En. Sec. 16, Ch. 150, L. 1973; R.C.M. 1947, 67-2344.**

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

CHAPTER 24

RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

Part 1 — General Provisions

70-24-101. Short title.
70-24-102. Purposes — liberal construction to promote.
70-24-103. General definitions.

70-24-104. Exclusions from application of chapter.
70-24-105. Supplementary principles of law applicable.
70-24-106. Construction against implicit repeal.
70-24-107. Territorial application.
70-24-108. What constitutes notice.
70-24-109. Obligation of good faith.

Part 2 — Rental Agreements

70-24-201. Rental agreement — terms and conditions.
70-24-202. Prohibited provisions in rental agreements.
70-24-203. Agreement not to permit receipt of rent free of obligation.
70-24-204. Effect of unsigned or undelivered rental agreement.

Part 3 — Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible.
70-24-302. Landlord to deliver possession of dwelling unit.
70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector.
70-24-304. Transfer of premises or termination of management — relief from liability.
70-24-305 through 70-24-310 reserved.
70-24-311. Landlord authorized to adopt rules.
70-24-312. Access to premises by landlord.
70-24-313 through 70-24-320 reserved.
70-24-321. Tenant to maintain dwelling unit.
70-24-322. Tenant to occupy as dwelling unit only — extended absence.

Part 4 — Remedies

70-24-401. Administration of remedies — enforcement.
70-24-402. Settlement of disputed claim or right.
70-24-403. Prohibited provision in rental agreement — unenforceability — damages.
70-24-404. Unconscionability — court discretion to refuse enforcement.
70-24-405. Failure of landlord to deliver possession — tenant's remedies.
70-24-406. Failure of landlord to maintain premises — tenant's remedies.
70-24-407. Damages for minor violations by landlord.
70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies.
70-24-409. Fire or casualty damage — rights of tenant.
70-24-410. Unlawful or unreasonable entry by landlord — tenant's remedies.
70-24-411. Unlawful ouster, exclusion, or diminution of service — tenant's remedies.
70-24-412 through 70-24-420 reserved.
70-24-421. Action for nonpayment of rent — tenant's counterclaim.
70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction.
70-24-423. Waiver of landlord's right to terminate for breach.
70-24-424. Refusal of access — landlord's remedies.
70-24-425. Failure of tenant to maintain dwelling — landlord's right to enter and repair.
70-24-426. Remedies for absence or abandonment.
70-24-427. Landlord's remedies after termination.
70-24-428. Landlord's recovery of possession limited.
70-24-429. Holdover remedies — consent to continued occupancy.
70-24-430. Disposition of personal property abandoned by tenant after termination.
70-24-431. Retaliatory conduct by landlord prohibited.
70-24-432 through 70-24-440 reserved.
70-24-441. Termination by landlord or tenant.
70-24-442. Attorney fees — costs.

Chapter Cross-References

Residential property tax credit for the elderly, 15-30-171 through 15-30-179.

Part 1

General Provisions

70-24-101. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

History: En. 42-401 by Sec. 1, Ch. 313, L. 1977; R.C.M. 1947, 42-401.

70-24-102. Purposes — liberal construction to promote. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

History: En. 42-402 by Sec. 2, Ch. 313, L. 1977; R.C.M. 1947, 42-402.

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court or the appropriate justice's court.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History: En. 42-409 by Sec. 9, Ch. 313, L. 1977; R.C.M. 1947, 42-409; amd. Sec. 2, Ch. 417, L. 1979.

70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit.

History: En. 42-408 by Sec. 8, Ch. 313, L. 1977; R.C.M. 1947, 42-408.

70-24-105. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

History: En. 42-403 by Sec. 3, Ch. 313, L. 1977; R.C.M. 1947, 42-403.

Cross-References

Who may contract, 28-2-201.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Agency, Title 28, ch. 10.

70-24-106. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: En. 42-404 by Sec. 4, Ch. 313, L. 1977; R.C.M. 1947, 42-404.

70-24-107. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: En. 42-407 by Sec. 7, Ch. 313, L. 1977; R.C.M. 1947, 42-407.

70-24-108. What constitutes notice. (1) A person has notice of a fact if:

(a) he has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known address.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

History: En. 42-412 by Sec. 12, Ch. 313, L. 1977; R.C.M. 1947, 42-412.

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: En. 42-410 by Sec. 10, Ch. 313, L. 1977; R.C.M. 1947, 42-410.

Part 2

Rental Agreements

70-24-201. Rental agreement — terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

History: En. 42-413 by Sec. 13, Ch. 313, L. 1977; R.C.M. 1947, 42-413.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(1).

Cross-References

Contracts — illegal objects and provisions, Title 28, ch. 2, part 7.

70-24-203. Agreement not to permit receipt of rent free of obligation. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 70-24-303.

History: En. 42-416 by Sec. 16, Ch. 313, L. 1977; R.C.M. 1947, 42-416.

70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: **En. 42-414 by Sec. 14, Ch. 313, L. 1977; R.C.M. 1947, 42-414.**

Part 3

Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

History: **En. 42-418 by Sec. 18, Ch. 313, L. 1977; R.C.M. 1947, 42-418.**

70-24-302. Landlord to deliver possession of dwelling unit. At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

History: **En. 42-419 by Sec. 19, Ch. 313, L. 1977; R.C.M. 1947, 42-419.**

70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; and

(g) install, in accordance with rules adopted by the department of justice, an approved smoke detector in each dwelling unit under his control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.

(2) If the duty imposed by subsection (1)(a) of this section is greater than a duty imposed by subsections (1)(b) through (1)(g), a landlord's duty shall be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection (1)(g).

History: En. 42-420 by Sec. 20, Ch. 313, L. 1977; R.C.M. 1947, 42-420; amd. Sec. 1, Ch. 567, L. 1989; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

70-24-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to chapter 25 of this title and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

History: En. 42-421 by Sec. 21, Ch. 313, L. 1977; R.C.M. 1947, 42-421.

70-24-305 through 70-24-310 reserved.

70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

History: En. 42-423 by Sec. 23, Ch. 313, L. 1977; R.C.M. 1947, 42-423.

70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or his agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of his intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

History: **En. 42-424 by Sec. 24, Ch. 313, L. 1977; R.C.M. 1947, 42-424.**

70-24-313 through 70-24-320 reserved.

70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that he occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

History: **En. 42-422 by Sec. 22, Ch. 313, L. 1977; R.C.M. 1947, 42-422.**

70-24-322. Tenant to occupy as dwelling unit only — extended absence. (1) Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

History: **En. 42-425 by Sec. 25, Ch. 313, L. 1977; R.C.M. 1947, 42-425.**

Part 4

Remedies

70-24-401. Administration of remedies — enforcement. (1) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: En. 42-405 by Sec. 5, Ch. 313, L. 1977; R.C.M. 1947, 42-405.

70-24-402. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: En. 42-406 by Sec. 6, Ch. 313, L. 1977; R.C.M. 1947, 42-406.

70-24-403. Prohibited provision in rental agreement — unenforceability — damages. (1) A provision prohibited by 70-24-202 included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(2).

70-24-404. Unconscionability — court discretion to refuse enforcement. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

History: En. 42-411 by Sec. 11, Ch. 313, L. 1977; R.C.M. 1947, 42-411.

70-24-405. Failure of landlord to deliver possession — tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

History: En. 42-427 by Sec. 27, Ch. 313, L. 1977; R.C.M. 1947, 42-427.

70-24-406. Failure of landlord to maintain premises — tenant's remedies. (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by himself, a member of his family, or other persons on the premises with his consent;

(b) make repairs himself that do not cost more than 1 month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

History: En. 42-426 by Sec. 26, Ch. 313, L. 1977; R.C.M. 1947, 42-426.

70-24-407. Damages for minor violations by landlord. If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2).

History: En. 42-428 by Sec. 28, Ch. 313, L. 1977; R.C.M. 1947, 42-428.

70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

History: **En. 42-429 by Sec. 29, Ch. 313, L. 1977; R.C.M. 1947, 42-429.**

70-24-409. Fire or casualty damage — rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

History: **En. 42-431 by Sec. 31, Ch. 313, L. 1977; R.C.M. 1947, 42-431.**

70-24-410. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: **En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(2).**

70-24-411. Unlawful ouster, exclusion, or diminution of service — tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

History: En. 42-432 by Sec. 32, Ch. 313, L. 1977; R.C.M. 1947, 42-432.

70-24-412 through 70-24-420 reserved.

70-24-421. Action for nonpayment of rent — tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

History: En. 42-430 by Sec. 30, Ch. 313, L. 1977; R.C.M. 1947, 42-430.

70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (5), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(5) Treble damages may not be recovered for the tenant's early termination of the tenancy.

History: En. 42-433 by Sec. 33, Ch. 313, L. 1977; R.C.M. 1947, 42-433; amd. Sec. 1, Ch. 221, L. 1983; amd. Sec. 1, Ch. 232, L. 1985; amd. Sec. 1, Ch. 547, L. 1987.

Cross-References

"Mobile home" defined for tax purposes, 15-1-101.

"Mobile home" defined for moving permit purposes, 61-4-309.

70-24-423. Waiver of landlord's right to terminate for breach. Acceptance by the landlord of full payment of rent due with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred. The acceptance of partial payment of rent due does not constitute a waiver of any right.

History: En. 42-436 by Sec. 36, Ch. 313, L. 1977; R.C.M. 1947, 42-436.

70-24-424. Refusal of access — landlord's remedies. If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

History: En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(1).

70-24-425. Failure of tenant to maintain dwelling — landlord's right to enter and repair. If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. 42-434 by Sec. 34, Ch. 313, L. 1977; R.C.M. 1947, 42-434.

70-24-426. Remedies for absence or abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

History: En. 42-435 by Sec. 35, Ch. 313, L. 1977; R.C.M. 1947, 42-435.

70-24-427. Landlord's remedies after termination. If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

History: En. 42-438 by Sec. 38, Ch. 313, L. 1977; R.C.M. 1947, 42-438.

70-24-428. Landlord's recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

History: En. 42-439 by Sec. 39, Ch. 313, L. 1977; R.C.M. 1947, 42-439.

70-24-429. Holdover remedies — consent to continued occupancy. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(3).

70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes the tenant has abandoned all personal property which the tenant has left on the premises, and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial

storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property and does not do so within 15 days after delivery of the tenant's response, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property himself, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for double damages.

(7) A public or private sale authorized by this section shall be conducted under the provisions of 30-9-504(3) or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, and sale and any delinquent rent or damages owing on the premises and must remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, shall revert to the general fund of the county available for general purposes.

History: En. 42-437 by Sec. 37, Ch. 313, L. 1977; R.C.M. 1947, 42-437; amd. Sec. 1, Ch. 483, L. 1985.

70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

History: En. 42-442 by Sec. 42, Ch. 313, L. 1977; R.C.M. 1947, 42-442.

70-24-432 through 70-24-440 reserved.

70-24-441. Termination by landlord or tenant. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(1), (2).

70-24-442. Attorney fees — costs. (1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

History: En. 42-417 by Sec. 17, Ch. 313, L. 1977; R.C.M. 1947, 42-417.

Cross-References

Civil procedure — costs, Title 25, ch. 10.

CHAPTER 25

RESIDENTIAL TENANTS' SECURITY DEPOSITS

Part 1 — General Provisions

70-25-101. Definitions.
70-25-102. Application of chapter.
70-25-103. Waivers and contrary provisions invalid.

Part 2 — Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom.
70-25-202. List of damages and refund — delivery to departing tenant.
70-25-203. Failure to provide list — forfeiture of deduction rights.
70-25-204. Wrongful withholding of security deposit — action.
70-25-205. Failure of departing tenant to furnish new address.
70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

Part 1

General Provisions

70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's

omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit. A fee or charge for cleaning and damages, no matter how designated, is presumed to be a security deposit.

History: En. 42-301 by Sec. 1, Ch. 219, L. 1974; amd. Sec. 1, Ch. 297, L. 1977; R.C.M. 1947, 42-301; amd. Sec. 1, Ch. 505, L. 1991.

Compiler's Comments

1991 Amendment: In definition of security deposit inserted last sentence relating to fees and charges for cleaning and damages.

Applicability: Section 6, Ch. 505, L. 1991, provided: "[This act] applies to all tenancies in existence 30 days after [the effective date of this act] [effective October 1, 1991]."

70-25-102. Application of chapter. This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

History: En. 42-302 by Sec. 2, Ch. 219, L. 1974; R.C.M. 1947, 42-302.

70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

History: En. 42-309 by Sec. 9, Ch. 219, L. 1974; R.C.M. 1947, 42-309; amd. Sec. 13, Ch. 115, L. 1979.

Part 2

Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom. (1) Any landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges may be deducted until written notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 48 hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing.

(4) No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

History: En. 42-303 by Sec. 3, Ch. 219, L. 1974; amd. Sec. 2, Ch. 297, L. 1977; R.C.M. 1947, 42-303; amd. Sec. 14, Ch. 115, L. 1979; amd. Sec. 2, Ch. 505, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near end after "deduction", inserted "including rent owed under 70-24-441(3)"; inserted (2) relating to inspection of premises; and in (3), in second sentence before "notice", inserted "written" and inserted last sentence relating to notice by certified mail.

Applicability: Section 6, Ch. 505, L. 1991, provided: "[This act] applies to all tenancies in existence 30 days after [the effective date of this act] [effective October 1, 1991]."

70-25-202. List of damages and refund — delivery to departing tenant. (1) Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any rent due and any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, to the leasehold premises that the landlord alleges are the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery shall be accomplished by mailing the list and refund to the tenant's last-known address or the new address provided by the tenant.

(2) If after inspection there are no damages to the premises, no cleaning required, and no rent unpaid and if the tenant can demonstrate that no utilities are unpaid by the tenant, the landlord shall return the security deposit within 10 days.

History: En. 42-304 by Sec. 4, Ch. 219, L. 1974; amd. Sec. 3, Ch. 297, L. 1977; R.C.M. 1947, 42-304; amd. Sec. 3, Ch. 505, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near middle after "list of", inserted "any rent due and"; inserted (2) relating to return of security deposit; and made minor changes in style.

Applicability: Section 6, Ch. 505, L. 1991, provided: "[This act] applies to all tenancies in existence 30 days after [the effective date of this act] [effective October 1, 1991]."

70-25-203. Failure to provide list — forfeiture of deduction rights. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

History: **En. 42-305 by Sec. 5, Ch. 219, L. 1974; amd. Sec. 4, Ch. 297, L. 1977; R.C.M. 1947, 42-305.**

70-25-204. Wrongful withholding of security deposit — action. (1) Any person who wrongfully withholds a residential property security deposit or any portion thereof shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been wrongfully withheld or deducted. The attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord.

(2) No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or his agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant.

History: **En. 42-306 by Sec. 6, Ch. 219, L. 1974; R.C.M. 1947, 42-306; amd. Sec. 4, Ch. 505, L. 1991.**

Compiler's Comments

1991 Amendment: In (2)(c), near end after "premises", deleted "whichever occurs first"; inserted (2)(d) relating to expiration of 10-day period; and made minor changes in style.

Applicability: Section 6, Ch. 505, L. 1991, provided: "[This act] applies to all tenancies in existence 30 days after [the effective date of this act] [effective October 1, 1991]."

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by 70-25-204. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

History: **En. 42-307 by Sec. 7, Ch. 219, L. 1974; R.C.M. 1947, 42-307.**

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement shall be barred from recovering any sum for damage to or cleaning of the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

History: En. 42-308 by Sec. 8, Ch. 219, L. 1974; amd. Sec. 5, Ch. 297, L. 1977; R.C.M. 1947, 42-308; amd. Sec. 5, Ch. 505, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence before "tenant", deleted "prospective" and at end, after "let", deleted "as well as" and at beginning of second sentence inserted "At the written request of the tenant" and at end inserted "must be provided to the tenant"; and in (3), near beginning before "tenant", deleted "prospective" and before "a written list" substituted "upon the written request of the tenant" for "if any".

Applicability: Section 6, Ch. 505, L. 1991, provided: "[This act] applies to all tenancies in existence 30 days after [the effective date of this act] [effective October 1, 1991]."

CHAPTER 26

LANDLORD AND TENANT
RESIDENTIAL AND COMMERCIAL

Part 1 — Residential and Commercial

70-26-101. Letting of parts of rooms prohibited.
70-26-102. Transferee of rental property to have same rights as transferor.
70-26-103. Attornment of tenant to stranger void.
70-26-104. Notice of action by third person served on tenant — duty to inform landlord.
70-26-105. Assignee of lessee — remedies of lessor against.
70-26-106. Rights of lessee and his assignees against lessor and his assignees.
70-26-107. Remedy for rent on lease for life.
70-26-108. Rent dependent on life — recovery.
70-26-109. Change of lease terms by notice.
70-26-110. Lease of city lot for over 75 years void.

Part 2 — Commercial

70-26-201. Term of lease when none specified.
70-26-202. Rent — when payable.
70-26-203. Failure of lessor to repair — lessee's remedies.

70-26-204. Renewal of lease by lessee's continued possession.
70-26-205. Notice required to terminate lease.
70-26-206. Rights of tenant for years or at will.
70-26-207. Repealed.

Part 1

Residential and Commercial

70-26-101. Letting of parts of rooms prohibited. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building under the same landlord is relieved from all obligation to pay rent to him while such double letting of any room continues.

History: En. Sec. 2629, Civ. C. 1895; re-en. Sec. 5235, Rev. C. 1907; re-en. Sec. 7750, R.C.M. 1921; Cal. Civ. C. Sec. 1950; Based on Field Civ. C. Sec. 998; re-en. Sec. 7750, R.C.M. 1935; R.C.M. 1947, 42-210.

70-26-102. Transferee of rental property to have same rights as transferor. A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease, or of any waste or cause of forfeiture as his grantor or devisor might have had.

History: En. Sec. 1273, Civ. C. 1895; re-en. Sec. 4521, Rev. C. 1907; re-en. Sec. 6763, R.C.M. 1921; Cal. Civ. C. Sec. 821; Field Civ. C. Sec. 260; re-en. Sec. 6763, R.C.M. 1935; R.C.M. 1947, 67-704.

70-26-103. Attornment of tenant to stranger void. The attornment of a tenant to a stranger is void unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

History: En. Sec. 48, p. 487, Bannack Stat.; re-en. Sec. 48, p. 403, Cod. Stat. 1871; re-en. Sec. 225, 5th Div. Rev. Stat. 1879; re-en. Sec. 283, 5th Div. Comp. Stat. 1887; re-en. Sec. 2627, Civ. C. 1895; re-en. Sec. 5233, Rev. C. 1907; re-en. Sec. 7748, R.C.M. 1921; Cal. Civ. C. Sec. 1948; re-en. Sec. 7748, R.C.M. 1935; R.C.M. 1947, 42-208.

Cross-References

Relation of landlord and tenant as affecting adverse possession, 70-19-412.

70-26-104. Notice of action by third person served on tenant — duty to inform landlord. Every tenant who receives notice of any proceeding to recover the real property occupied by him or the possession thereof must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver it to him if in writing.

History: En. Sec. 2628, Civ. C. 1895; re-en. Sec. 5234, Rev. C. 1907; re-en. Sec. 7749, R.C.M. 1921; Cal. Civ. C. Sec. 1949; Based on Field Civ. C. Sec. 997; re-en. Sec. 7749, R.C.M. 1935; R.C.M. 1947, 42-209.

70-26-105. Assignee of lessee — remedies of lessor against. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan and is not accompanied by possession of the premises.

History: En. Sec. 1274, Civ. C. 1895; re-en. Sec. 4522, Rev. C. 1907; re-en. Sec. 6764, R.C.M. 1921; Cal. Civ. C. Sec. 822; Based on Field Civ. C. Sec. 261; re-en. Sec. 6764, R.C.M. 1935; R.C.M. 1947, 67-705.

70-26-106. Rights of lessee and his assignees against lessor and his assignees. Whatever remedies the lessee of any real property may have against his immediate lessor for the breach of any agreement in the lease, he may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against encumbrances or relating to the title or possession of the premises.

History: En. Sec. 1275, Civ. C. 1895; re-en. Sec. 4523, Rev. C. 1907; re-en. Sec. 6765, R.C.M. 1921; Cal. Civ. C. Sec. 823; re-en. Sec. 6765, R.C.M. 1935; R.C.M. 1947, 67-706.

70-26-107. Remedy for rent on lease for life. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

History: En. Sec. 1276, Civ. C. 1895; re-en. Sec. 4524, Rev. C. 1907; re-en. Sec. 6766, R.C.M. 1921; Cal. Civ. C. Sec. 824; Field Civ. C. Sec. 263; re-en. Sec. 6766, R.C.M. 1935; R.C.M. 1947, 67-707.

70-26-108. Rent dependent on life — recovery. Rent dependent on the life of a person may be recovered after as well as before his death.

History: En. Sec. 1277, Civ. C. 1895; re-en. Sec. 4525, Rev. C. 1907; re-en. Sec. 6767, R.C.M. 1921; Cal. Civ. C. Sec. 825; Field Civ. C. Sec. 264; re-en. Sec. 6767, R.C.M. 1935; R.C.M. 1947, 67-708.

Cross-References

Probate — creditors' claims, Title 72, ch. 3, part 8.

Probate — claims against estate, Title 72, ch. 12, part 8.

70-26-109. Change of lease terms by notice. In all leases of lands or tenements or of any interest therein from month to month, the landlord may, upon giving notice in writing at least 15 days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice if the tenant shall continue to hold the premises after the expiration of the month.

History: En. Sec. 1279, Civ. C. 1895; re-en. Sec. 4527, Rev. C. 1907; re-en. Sec. 6769, R.C.M. 1921; Cal. Civ. C. Sec. 827; re-en. Sec. 6769, R.C.M. 1935; R.C.M. 1947, 67-710.

Cross-References

Modification of contracts, Title 28, ch. 2, part 16.

70-26-110. Lease of city lot for over 75 years void. No lease or grant of any town or city lot for a period longer than 75 years, in which shall be reserved any rent or service of any kind, shall be valid.

History: En. Sec. 1153, Civ. C. 1895; re-en. Sec. 4466, Rev. C. 1907; re-en. Sec. 6708, R.C.M. 1921; Cal. Civ. C. Sec. 718; amd. Sec. 1, Ch. 147, L. 1929; re-en. Sec. 6708, R.C.M. 1935; R.C.M. 1947, 67-409.

Cross-References

Leases for more than 1 year to be in writing, 28-2-903.

Part 2

Commercial

70-26-201. Term of lease when none specified. A hiring of real property, other than lodgings and dwelling houses, in places where there is no usage on the subject, is presumed to be for 1 year from its commencement unless otherwise expressed in the hiring.

History: En. Sec. 2622, Civ. C. 1895; re-en. Sec. 5228, Rev. C. 1907; re-en. Sec. 7743, R.C.M. 1921; Cal. Civ. C. Sec. 1943; re-en. Sec. 7743, R.C.M. 1935; R.C.M. 1947, 42-203.

Cross-References

Leases for more than 1 year to be in writing, 28-2-903.

Leases on town or city lots for over 75 years void, 70-26-110.

70-26-202. Rent — when payable. When there is no usage or contract to the contrary, rents for real property under an arrangement not governed by chapter 24 of this title are payable at the termination of the holding if it does not exceed 1 year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

History: En. Sec. 2626, Civ. C. 1895; re-en. Sec. 5232, Rev. C. 1907; re-en. Sec. 7747, R.C.M. 1921; Cal. Civ. C. Sec. 1947; re-en. Sec. 7747, R.C.M. 1935; R.C.M. 1947, 42-207; amd. Sec. 15, Ch. 115, L. 1979.

70-26-203. Failure of lessor to repair — lessee's remedies. (1) If within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, and if the cost of such repairs does not require an expenditure greater than 1 month's rent of the premises, the lessee may perform such repairs himself and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he is discharged from further payment of rent or performance of other conditions.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title.

History: En. Sec. 2621, Civ. C. 1895; re-en. Sec. 5227, Rev. C. 1907; re-en. Sec. 7742, R.C.M. 1921; Cal. Civ. C. Sec. 1942; Based on Field Civ. C. Sec. 991; re-en. Sec. 7742, R.C.M. 1935; R.C.M. 1947, 42-202; amd. Sec. 16, Ch. 115, L. 1979.

70-26-204. Renewal of lease by lessee's continued possession. If a lessee of real property leased under an arrangement not governed by chapter 24 of this title remains in possession thereof after the expiration of the hiring and the lessor accepts a rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding 1 month when the rent is payable monthly, or in any case 1 year.

History: En. Sec. 2624, Civ. C. 1895; re-en. Sec. 5230, Rev. C. 1907; re-en. Sec. 7745, R.C.M. 1921; Cal. Civ. C. Sec. 1945; Based on Field Civ. C. Sec. 994; re-en. Sec. 7745, R.C.M. 1935; R.C.M. 1947, 42-205; amd. Sec. 17, Ch. 115, L. 1979.

70-26-205. Notice required to terminate lease. (1) A hiring of real property for a term not specified by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one of the parties gives notice to the other of his intention to terminate the hiring at least as long before the expiration thereof as the term of the hiring itself, not exceeding 1 month.

(2) Subsection (1) does not apply to real property leased under an arrangement governed by chapter 24 of this title.

History: En. Sec. 2625, Civ. C. 1895; re-en. Sec. 5231, Rev. C. 1907; re-en. Sec. 7746, R.C.M. 1921; Cal. Civ. C. Sec. 1946; Based on Field Civ. C. Sec. 995; re-en. Sec. 7746, R.C.M. 1935; R.C.M. 1947, 42-206; amd. Sec. 18, Ch. 115, L. 1979.

Cross-References

Tenancy at will — termination after notice, 70-27-104.

Holdover or collusion after notice — treble rent, 70-27-207.

Holdover after tenant's notice to quit — treble rent, 70-27-208.

70-26-206. Rights of tenant for years or at will. (1) A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, and work mines and quarries open at the commencement of his tenancy; and a tenant at will or for an indefinite term may cultivate and harvest the crops growing at the end of his tenancy.

(2) A tenant for years or at will has no other rights to the property than those given to him by the agreement or instrument by which his tenancy is acquired or by subsection (1).

(3) Subsection (2) does not apply to arrangements governed by chapter 24 of this title.

History: (1)En. Sec. 1271, Civ. C. 1895; re-en. Sec. 4519, Rev. C. 1907; re-en. Sec. 6761, R.C.M. 1921; Cal. Civ. C. Sec. 819; Based on Field Civ. C. Sec. 258; re-en. Sec. 6761, R.C.M. 1935; Sec. 67-702, R.C.M. 1947; (2)En. Sec. 1272, Civ. C. 1895; re-en. Sec. 4520, Rev. C. 1907; re-en. Sec. 6762, R.C.M. 1921; Cal. Civ. C. Sec. 820; Field Civ. C. Sec. 259; re-en. Sec. 6762, R.C.M. 1935; Sec. 67-703, R.C.M. 1947; R.C.M. 1947, 67-702, 67-703; (3)En. Sec. 19, Ch. 115, L. 1979.

70-26-207. Repealed. Sec. 1, Ch. 11, L. 1985.

History: En. Sec. 1152, Civ. C. 1895; re-en. Sec. 4465, Rev. C. 1907; amd. Sec. 1, Ch. 172, L. 1919; re-en. Sec. 6707, R.C.M. 1921; Cal. Civ. C. Sec. 717; re-en. Sec. 6707, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1941; R.C.M. 1947, 67-408.

CHAPTER 27

FORCIBLE ENTRY AND DETAINER UNLAWFUL DETAINER

Part 1 — Definitions and Preliminary Procedure

70-27-101. Application and jurisdiction.
70-27-102. Forcible entry defined.
70-27-103. Forcible detainer defined.
70-27-104. Tenancy at will — termination by notice.
70-27-105. Remedies of landlord after notice.
70-27-106. Reentry — when and how to be made.
70-27-107. Action for possession under right of reentry — notice not required.
70-27-108. Unlawful detainer defined.
70-27-109. General rules of practice applicable.
70-27-110. Service of notice — how made.
70-27-111. Parties defendant.
70-27-112. Applicability of general provisions on parties.
70-27-113. Complaint and summons.
70-27-114. Summons — contents — service.
70-27-115. Defendant's appearance and answer.
70-27-116. Verification of complaint and answer.
70-27-117. Judgment by default.

Part 2 — Trial, Judgment, and Appeal

70-27-201. Trial by jury.
70-27-202. Actions in justice's court to be tried within 10 days.
70-27-203. Showings required on trial.
70-27-204. Amendment of complaint after trial begins.
70-27-205. Verdict, judgment, and execution.
70-27-206. Treble damages.
70-27-207. Holdover or collusion after notice — treble rent.
70-27-208. Holdover after tenant's notice to quit — treble rent.
70-27-209. Treble rent exclusive of interest.
70-27-210. Relief against forfeiture of lease in case of hardship.
70-27-211. Appeal.
70-27-212. General provisions on new trials and appeals applicable.

Part 1

Definitions and Preliminary Procedure

70-27-101. Application and jurisdiction. (1) This chapter, except as it relates to forcible detainer as defined in 70-27-103(2) only and as it relates to forcible entry, does not apply to arrangements governed by chapter 24 of this title.

(2) The district court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter, provided that justices' courts, within their respective counties, shall have concurrent jurisdiction.

History: En. Sec. 2084, C. Civ. Proc. 1895; re-en. Sec. 7273, Rev. C. 1907; re-en. Sec. 9891, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1163; re-en. Sec. 9891, R.C.M. 1935; amd. Sec. 26, Ch. 491, L. 1973; R.C.M. 1947, 93-9705; amd. Sec. 3, Ch. 417, L. 1979.

70-27-102. Forcible entry defined. Every person is guilty of a forcible entry who either:

(1) by breaking open doors, windows, or other parts of a house or by any kind of violence or circumstance of terror enters upon or into any real property or mining claim; or

(2) after entering peaceably upon real property or mining claim, turns out by force, threats, or menacing conduct the party in possession.

History: En. Sec. 2080, C. Civ. Proc. 1895; re-en. Sec. 7269, Rev. C. 1907; re-en. Sec. 9887, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1159; re-en. Sec. 9887, R.C.M. 1935; R.C.M. 1947, 93-9701.

70-27-103. Forcible detainer defined. Every person is guilty of a forcible detainer who either:

(1) by force or by menaces and threats of violence unlawfully holds and keeps the possession of any real property or mining claim, whether the same was acquired peaceably or otherwise; or

(2) in the nighttime or during the absence of the occupant of any lands or mining claim unlawfully enters upon real property and, after demand made for the surrender thereof, for the period of 5 days refuses to surrender the same to such former occupant. The occupant of real property or mining claim, within the meaning of this subsection, is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisputed possession of such lands.

History: En. Sec. 2081, C. Civ. Proc. 1895; re-en. Sec. 7270, Rev. C. 1907; re-en. Sec. 9888, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1160; re-en. Sec. 9888, R.C.M. 1935; R.C.M. 1947, 93-9702.

70-27-104. Tenancy at will — termination by notice. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed in this chapter, to remove from the premises within a period of not less than 1 month, to be specified in the notice; but none of the estates or tenancies embraced by the provisions of 70-15-202(4) is a tenancy or estate at will.

History: En. Sec. 1240, Civ. C. 1895; re-en. Sec. 4502, Rev. C. 1907; re-en. Sec. 6744, R.C.M. 1921; Cal. Civ. C. Sec. 789; Based on Field Civ. C. Sec. 240; amd. Sec. 1, Ch. 50, L. 1931; re-en. Sec. 6744, R.C.M. 1935; R.C.M. 1947, 67-523.

70-27-105. Remedies of landlord after notice. After such notice has been served and the period specified by such notice has expired, but not before, the landlord may reenter or proceed according to law to recover possession.

History: En. Sec. 1241, Civ. C. 1895; re-en. Sec. 4503, Rev. C. 1907; re-en. Sec. 6745, R.C.M. 1921; Cal. Civ. C. Sec. 790; Based on Field Civ. C. Sec. 242; re-en. Sec. 6745, R.C.M. 1935; R.C.M. 1947, 67-524.

70-27-106. Reentry — when and how to be made. Whenever the right of reentry is given to the grantor or lessor in any grant or lease or otherwise, such reentry may be made at any time after the right has accrued, upon 3 days' notice, as provided in this chapter.

History: En. Sec. 1242, Civ. C. 1895; re-en. Sec. 4504, Rev. C. 1907; re-en. Sec. 6746, R.C.M. 1921; Cal. Civ. C. Sec. 791; Based on Field Civ. C. Sec. 243; re-en. Sec. 6746, R.C.M. 1935; R.C.M. 1947, 67-525.

70-27-107. Action for possession under right of reentry — notice not required. An action for the possession of real property leased or granted with a right of reentry may be maintained at any time in the district court, after the right to reenter has accrued, without the notice prescribed in 70-27-106.

History: En. Sec. 1244, Civ. C. 1895; re-en. Sec. 4506, Rev. C. 1907; re-en. Sec. 6748, R.C.M. 1921; Cal. Civ. C. Sec. 793; Field Civ. C. Sec. 244; re-en. Sec. 6748, R.C.M. 1935; R.C.M. 1947, 67-527.

70-27-108. Unlawful detainer defined. A tenant of real property or mining claim, for a term less than life, is guilty of unlawful detainer:

(1) when he continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him without the permission of the landlord or the successor in estate of his landlord, if any there be, but in case of a tenancy at will, it must first be terminated by notice, as prescribed in 70-27-104;

(2) where he continues in possession, in person or by subtenant, without permission of his landlord or the successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and 3 days' notice in writing requiring its payment, stating the amount which is due, or possession of the property shall have been served upon him and, if there be a subtenant in actual occupation of the premises, also upon such subtenant. Such notice may be served at any time within 1 year after the rent becomes due. In all cases of tenancy upon agricultural lands where the tenant has held over and retained possession for more than 60 days after the expiration of his term without any demand of possession or notice to quit by the landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of the landlord or the successor in estate of his landlord and shall be entitled to hold under the terms of the lease for another full year and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year;

(3) when he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and 3 days' notice in writing, requiring the performance of such conditions or covenants or the possession of the property, shall have been served upon him and, if there be a subtenant in actual occupation of the premises, also upon such subtenant. Within 3 days after the serving of the notice, the tenant or any subtenant in actual occupation of the premises or any mortgagee of the term or other person

interested in its continuance may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. If the covenants and conditions of the lease violated by the lessee cannot afterward be performed, then no notice, as last prescribed herein, need be given to said lessee or his subtenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him. Any tenant or subtenant assigning or subletting or committing waste upon the demised premises contrary to the covenants of his lease thereby terminates the lease, and the landlord or his successor in estate shall, upon service of 3 days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

History: En. Sec. 658, p. 174, Bannack Stat.; re-en. Sec. 647, p. 165, Cod. Stat. 1871; re-en. Sec. 707, 1st Div. Rev. Stat. 1879; re-en. Sec. 727, 1st Div. Comp. Stat. 1887; en. Sec. 2082, C. Civ. Proc. 1895; re-en. Sec. 7271, Rev. C. 1907; re-en. Sec. 9889, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1161; re-en. Sec. 9889, R.C.M. 1935; R.C.M. 1947, 93-9703.

Cross-References

Nonapplicability of unlawful detainer to residential arrangements, 70-27-101.

70-27-109. General rules of practice applicable. Except as otherwise provided in this chapter, the provisions of Title 25 are applicable to and constitute the rules of practice mentioned in this chapter.

History: En. Sec. 2097, C. Civ. Proc. 1895; re-en. Sec. 7286, Rev. C. 1907; re-en. Sec. 9904, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1177; re-en. Sec. 9904, R.C.M. 1935; R.C.M. 1947, 93-9718; amd. Sec. 20, Ch. 115, L. 1979.

Cross-References

Montana Rules of Civil Procedure incorporated into statute, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

70-27-110. Service of notice — how made. (1) The notices required by 70-27-108 may be served, either:

(a) by delivering a copy to the tenant personally;

(b) if he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy through the mail addressed to the tenant at his place of residence; or

(c) if such place of residence and business cannot be ascertained or a person of suitable age or discretion there cannot be found, then by affixing a copy in a conspicuous place on the property and also delivering a copy to a person there residing if such person can be found and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

(2) Service upon a subtenant may be made in the same manner.

History: En. Sec. 2083, C. Civ. Proc. 1895; re-en. Sec. 7272, Rev. C. 1907; re-en. Sec. 9890, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1162; re-en. Sec. 9890, R.C.M. 1935; R.C.M. 1947, 93-9704.

Cross-References

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

70-27-111. Parties defendant. (1) No person other than the tenant of the premises and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed need be made parties defendant in the proceeding, nor shall any proceeding abate or the plaintiff be nonsuited for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against such party.

(2) In case a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by 70-27-108(2) upon the tenant of the premises, the fact that such notice was not served on each subtenant shall constitute no defense to the action.

(3) In case a married person is a tenant or subtenant, failure to join such person's spouse shall constitute no defense; but in case the spouse is not joined, an execution issued upon a personal judgment against the tenant or subtenant can only be enforced against property on the premises at the commencement of the action or against property that is owned solely by the tenant or subtenant and not by his spouse.

(4) All persons who enter the premises under the tenant after the commencement of the action shall be bound by the judgment the same as if he or they had been made party to the action.

History: En. Sec. 2085, C. Civ. Proc. 1895; re-en. Sec. 7274, Rev. C. 1907; re-en. Sec. 9892, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1164; re-en. Sec. 9892, R.C.M. 1935; amd. Sec. 58, Ch. 535, L. 1975; R.C.M. 1947, 93-9706.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

70-27-112. Applicability of general provisions on parties. Except as provided in 70-27-111, the provisions of Title 25 relating to parties to civil actions are applicable to this proceeding.

History: En. Sec. 2086, C. Civ. Proc. 1895; re-en. Sec. 7275, Rev. C. 1907; re-en. Sec. 9893, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1165; re-en. Sec. 9893, R.C.M. 1935; R.C.M. 1947, 93-9707.

70-27-113. Complaint and summons. (1) The plaintiff, in his complaint, which must be in writing, must set forth the facts on which he seeks to recover and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.

(2) Upon filing the complaint, a summons must be issued thereon as in other cases, returnable at a date designated therein, which shall not be less than 4 days or more than 12 days from its date.

History: En. Sec. 2087, C. Civ. Proc. 1895; re-en. Sec. 7276, Rev. C. 1907; re-en. Sec. 9894, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1166; re-en. Sec. 9894, R.C.M. 1935; R.C.M. 1947, 93-9708(part).

70-27-114. Summons — contents — service. (1) The summons must:

(a) state the parties to the proceeding, the court in which the same is brought, the nature of the action in concise terms, and the relief sought and also the return day; and

(b) notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him.

(2) The summons must be directed to the defendant and be served at least 4 days before the return day designated therein and must be served and returned in the same manner as summons in civil actions is served and returned.

(3) The summons must be served personally upon the defendants if the defendants can be found with due diligence within the state or if the defendants cannot be found with due diligence within the state, the summons must be served in the same manner as notices are required to be served in 70-27-110. The complaint need not be served.

(4) Upon the return of any summons issued under this chapter, where the same has not for any reason been served or not served in time, the plaintiff may have a new summons issued, the same as if no previous summons had been issued.

History: En. Secs. 2087, 2088, C. Civ. Proc. 1895; re-en. Secs. 7276, 7277, Rev. C. 1907; re-en. Secs. 9894, 9895, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 1166, 1167; re-en. Secs. 9894, 9895, R.C.M. 1935; R.C.M. 1947, 93-9708(part), 93-9709; amd. Sec. 1, Ch. 303, L. 1979.

70-27-115. Defendant's appearance and answer. On or before the day fixed for his appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim.

History: En. Sec. 2090, C. Civ. Proc. 1895; re-en. Sec. 7279, Rev. C. 1907; re-en. Sec. 9897, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1170; re-en. Sec. 9897, R.C.M. 1935; R.C.M. 1947, 93-9711; amd. Sec. 21, Ch. 115, L. 1979.

70-27-116. Verification of complaint and answer. The complaint and answer must be verified. If new matter be set up in the answer, it is deemed denied.

History: En. Sec. 2095, C. Civ. Proc. 1895; re-en. Sec. 7284, Rev. C. 1907; re-en. Sec. 9902, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1175; re-en. Sec. 9902, R.C.M. 1935; R.C.M. 1947, 93-9716.

70-27-117. Judgment by default. If at the time appointed the defendant does not appear and defend, the court must enter his default and enter judgment in favor of the plaintiff as prayed for in the complaint.

History: En. Sec. 2089, C. Civ. Proc. 1895; re-en. Sec. 7278, Rev. C. 1907; re-en. Sec. 9896, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1169; re-en. Sec. 9896, R.C.M. 1935; R.C.M. 1947, 93-9710.

Part 2

Trial, Judgment, and Appeal

70-27-201. Trial by jury. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

History: En. Sec. 2091, C. Civ. Proc. 1895; re-en. Sec. 7280, Rev. C. 1907; re-en. Sec. 9898, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1171; re-en. Sec. 9898, R.C.M. 1935; R.C.M. 1947, 93-9712.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Juries and jurors, Title 3, ch. 15.

70-27-202. Actions in justice's court to be tried within 10 days. (1) Actions filed in justice's court under this chapter shall be tried within 10 days after the appearance or answer date stated in the summons unless the defendant applying for a continuance shall give an undertaking to the adverse party with good and sufficient security to be approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment be rendered against the defendant.

(2) The plaintiff and defendant may stipulate to a continuance of the trial beyond the limit of this section without the necessity of an undertaking.

History: En. 93-9712.1 by Sec. 1, Ch. 166, L. 1977; R.C.M. 1947, 93-9712.1.

Cross-References

Jurisdiction of Justices' Courts, Title 3, ch. 10, part 3.

70-27-203. Showings required on trial. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors or those whose interest in such premises he claims have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings and that his interest therein is not then ended or determined, and such showing is a bar to the proceedings.

History: En. Sec. 654, p. 173, Bannack Stat.; re-en. Sec. 643, p. 164, Cod. Stat. 1871; re-en. Sec. 703, 1st Div. Rev. Stat. 1879; re-en. Sec. 723, 1st Div. Comp. Stat. 1887; amd. Sec. 2092, C. Civ. Proc. 1895; re-en. Sec. 7281, Rev. C. 1907; re-en. Sec. 9899, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1172; re-en. Sec. 9899, R.C.M. 1935; R.C.M. 1947, 93-9713.

70-27-204. Amendment of complaint after trial begins. (1) When, upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either forcible entry or forcible or unlawful detainer and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform with such proof. Such amendment must be made without any imposition of terms.

(2) No continuance shall be permitted on account of such amendment unless the defendant by affidavit filed shows to the satisfaction of the court good cause therefor.

History: En. Sec. 2093, C. Civ. Proc. 1895; re-en. Sec. 7282, Rev. C. 1907; re-en. Sec. 9900, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1173; re-en. Sec. 9900, R.C.M. 1935; R.C.M. 1947, 93-9714.

70-27-205. Verdict, judgment, and execution. (1) If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

(2) The jury, or the court if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry or by any forcible or unlawful detainer alleged in the complaint and proved on the trial and find the amount of any rent due if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant, guilty of the forcible entry or forcible or unlawful detainer, for three times the amount of the damages thus assessed and of the rent found due.

(3) When the proceeding is for an unlawful detainer after default in the payment of the rent and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant or any subtenant or any mortgagee of the term or other party interested in its continuance may pay into court for the landlord the amount found due as rent with interest thereon and the amount of damages found by the jury or the court for the unlawful detainer and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but if payment, as here provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

History: En. Sec. 2094, C. Civ. Proc. 1895; re-en. Sec. 7283, Rev. C. 1907; re-en. Sec. 9901, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1174; re-en. Sec. 9901, R.C.M. 1935; R.C.M. 1947, 93-9715.

70-27-206. Treble damages. If a person recovers damages for a forcible or unlawful entry in or upon or detention of any building or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

History: En. Sec. 232, p. 91, Bannack Stat.; re-en. Sec. 253, p. 187, L. 1867; re-en. Sec. 302, p. 93, Cod. Stat. 1871; re-en. Sec. 353, L. 1877; re-en. Sec. 353, 1st Div. Rev. Stat. 1879; re-en. Sec. 365, 1st Div. Comp. Stat. 1887; re-en. Sec. 1304, C. Civ. Proc. 1895; re-en. Sec. 6869, Rev. C. 1907; re-en. Sec. 9478, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 735; re-en. Sec. 9478, R.C.M. 1935; R.C.M. 1947, 93-6105.

70-27-207. Holdover or collusion after notice — treble rent. If any tenant or any person in collusion with the tenant holds over any lands or tenements after demand made and 1 month's notice in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

History: En. Sec. 4351, Civ. C. 1895; re-en. Sec. 6077, Rev. C. 1907; re-en. Sec. 8695, R.C.M. 1921; Cal. Civ. C. Sec. 3345; re-en. Sec. 8695, R.C.M. 1935; R.C.M. 1947; 17-502.

70-27-208. Holdover after tenant's notice to quit — treble rent. If any tenant gives notice of his intention to quit the premises and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

History: En. Sec. 4350, Civ. C. 1895; re-en. Sec. 6076, Rev. C. 1907; re-en. Sec. 8694, R.C.M. 1921; Cal. Civ. C. Sec. 3344; re-en. Sec. 8694, R.C.M. 1935; R.C.M. 1947, 17-501.

70-27-209. Treble rent exclusive of interest. The damages prescribed by 70-27-207 and 70-27-208 are exclusive of exemplary damages and interest.

History: En. Sec. 4364, Civ. C. 1895; re-en. Sec. 6085, Rev. C. 1907; re-en. Sec. 8703, R.C.M. 1921; Cal. Civ. C. Sec. 3357; Field Civ. C. Sec. 1876; re-en. Sec. 8703, R.C.M. 1935; R.C.M. 1947, 17-605(part).

70-27-210. Relief against forfeiture of lease in case of hardship. (1) The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate in case of hardship where application for such relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in 70-27-205.

(2) The application may be made by a tenant or subtenant or mortgagee of the term or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which relief is sought, and be verified by the applicant.

(3) Notice of the application with a copy of the petition must be served on the plaintiff in the judgment, who may appear and contest the application.

(4) In no case shall the application be granted except on condition that full payment of rent due or full performance of conditions or covenants stipulated, so far as the same is practicable, be made.

History: En. Sec. 2099, C. Civ. Proc. 1895; re-en. Sec. 7288, Rev. C. 1907; re-en. Sec. 9906, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1179; re-en. Sec. 9906, R.C.M. 1935; R.C.M. 1947, 93-9720.

70-27-211. Appeal. An appeal may be taken by the plaintiff or defendant as in other cases.

History: En. Sec. 2096, C. Civ. Proc. 1895; re-en. Sec. 7285, Rev. C. 1907; re-en. Sec. 9903, R.C.M. 1921; re-en. Sec. 9903, R.C.M. 1935; R.C.M. 1947, 93-9717.

70-27-212. General provisions on new trials and appeals applicable. The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

History: En. Sec. 2098, C. Civ. Proc. 1895; re-en. Sec. 7287, Rev. C. 1907; re-en. Sec. 9905, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1178; re-en. Sec. 9905, R.C.M. 1935; R.C.M. 1947, 93-9719.

CHAPTER 28

QUIETING TITLE TO REAL PROPERTY

Part 1 — Quieting Title Generally

70-28-101. Quiet title action authorized.
70-28-102. General procedural provisions applicable.
70-28-103. Venue.
70-28-104. Parties defendant — unknown claimants.
70-28-105. Maintenance of action when no known claimants.
70-28-106. Notice of action to be filed with clerk and recorder.
70-28-107. Jurisdiction acquired by service — complete adjudication — judgment.
70-28-108. Prerequisites to decree against defendant not present.
70-28-109. Who bound by judgment.
70-28-110. When value of improvements may be allowed as setoff.
70-28-111. Termination of plaintiff's right during action — damages for withholding.
70-28-112. Costs.
70-28-113. Order for survey or measurement.

Part 2 — Property Granted to Heirs of Deceased Entryman—Quiet Title

70-28-201. Action authorized.
70-28-202. General procedural provisions applicable.
70-28-203. Remedies cumulative.
70-28-204. Executor, administrator, or guardian as party.
70-28-205. Complaint.
70-28-206. Affidavit to accompany complaint.
70-28-207. Summons — issuance and form.
70-28-208. Publication and posting of summons.
70-28-209. Personal service of summons — service by mail.
70-28-210. Jurisdiction acquired by service — complete.
70-28-211. Depositions.
70-28-212. Time for appearance by defendant — answer.
70-28-213. Recording of notice by plaintiff and defendant.
70-28-214. Default judgment prohibited — proof and inquiry required.
70-28-215. Judgment — nature and effect — recording.
70-28-216. Subsequent action — notice to original parties required.

Part 3 — Entry Townsite Deeds

70-28-301. Entry townsite land defined.
70-28-302. Petition for deed — qualified claimants.
70-28-303. Notice requirements.
70-28-304. Judge to issue deed — requirements.

Part 1

Quieting Title Generally

70-28-101. Quiet title action authorized. An action may be brought and prosecuted to final decree, judgment, or order by any person or persons, whether in actual possession or not, claiming title to real estate against any person or persons, both known and unknown, who claim or may claim any right, title, estate, or interest therein or lien or encumbrance thereon adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, for the purpose of determining such claim or possible claim and quieting the title to said real estate.

History: En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).

Cross-References

Ownership interests in land sold for taxes
— quiet title, Title 15, ch. 18, part 4.

70-28-102. General procedural provisions applicable. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4, 12(a), and 41(e), M.R.Civ.P., so far as they are not in conflict with this part, are applicable to the action herein provided for.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9486, R.C.M. 1921; re-en. Sec. 9486, R.C.M. 1935; R.C.M. 1947, 93-6209; amd. Sec. 22, Ch. 115, L. 1979.

70-28-103. Venue. All actions brought under 70-28-101 must be brought in the county in which the real estate or a portion thereof, as to which the title is sought to be quieted, is situated; provided that if the real estate is situated in more than one county, said action may be brought and prosecuted in either of said counties, and a transcript of the original judgment certified by the clerk of court shall be filed in the office of the clerk of court in the county other than which the action was brought in which any of the real estate affected thereby is situated.

History: En. Sec. 233, p. 92, Bannack Stat.; re-en. Sec. 254, p. 188, L. 1867; re-en. Sec. 303, p. 94, Cod. Stat. 1871; re-en. Sec. 354, p. 138, L. 1877; re-en. Sec. 354, 1st Div. Rev. Stat. 1879; re-en. Sec. 366, 1st Div. Comp. Stat. 1887; amd. Sec. 1310, C. Civ. Proc. 1895; re-en. Sec. 6870, Rev. C. 1907; amd. Sec. 1, Ch. 113, L. 1915; re-en. Sec. 9479, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 738; amd. Sec. 1, Ch. 70, L. 1931; re-en. Sec. 9479, R.C.M. 1935; R.C.M. 1947, 93-6203(part).

70-28-104. Parties defendant — unknown claimants. (1) In any action brought under 70-28-101 and 70-28-103, the plaintiff may join as defendants any or all persons, known or unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title, whether such claim or possible claim be present or contingent, including the person or persons in possession if the plaintiff is not in possession.

(2) If the plaintiff shall desire to obtain a complete adjudication of the title to the real estate described in the complaint, he may name as defendants all known persons who assert or who might assert any claim as in this section above specified and may join as defendants all persons unknown who might make any such claim by adding in the caption of the complaint in such action the words "and all other persons, unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent".

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9480, R.C.M. 1921; re-en. Sec. 9480, R.C.M. 1935; R.C.M. 1947, 93-6204; amd. Sec. 182, Ch. 575, L. 1981.

Cross-References

Designating unknown persons as defendants, 25-3-504.

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

70-28-105. Maintenance of action when no known claimants. If in any case there are no known claimants or possible claimants to any of the property involved in any action contemplated by 70-28-101 through 70-28-109, the action may nevertheless be maintained against all persons unknown claiming or who might claim any right, title, estate, or interest in or lien or encumbrance upon the real property described in the complaint or any part thereof adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued, and such action may be prosecuted to judgment in the same manner and with like effect as though there had been known claimants or possible claimants; and in any such case, the complaint, the affidavit for service by publication, the order for service by publication, and the decree shall state the facts and the summons shall be directed to such unknown persons.

History: En. Sec. 1, Ch. 68, L. 1939; re-en. Sec. 9488.1, R.C.M. 1935; R.C.M. 1947, 93-6212.

70-28-106. Notice of action to be filed with clerk and recorder. Before any order for the publication of summons is granted as provided in Rule 4, M.R.Civ.P., the plaintiff shall file, in the office of the clerk and recorder of each county in which any of the property involved in such action is situated, a notice of the pendency of such action, signed by the plaintiff or his attorney, which notice shall contain:

(1) the title of the court in which such action is filed;
(2) the full caption of the cause;
(3) a complete description of all the property involved in such action; and
(4) a statement of the relief sought by plaintiff.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9481, R.C.M. 1921; re-en. Sec. 9481, R.C.M. 1935; R.C.M. 1947, 93-6205.

70-28-107. Jurisdiction acquired by service — complete adjudication — judgment. (1) Upon the service of summons on all defendants, known and unknown, in the manner provided in Rule 4, M.R.Civ.P., the court in which such action is tried shall have jurisdiction to make a complete adjudication of the title to the lands named in the complaint and the title to which is sought to be quieted, including jurisdiction to direct:

(a) the cancellation of instruments constituting clouds upon such title;

(b) the execution of conveyances where it appears that any party to such action should execute such conveyance or conveyances;

(c) the execution of satisfactions of mortgages and other apparent liens upon such land or any part thereof; or

(d) the doing of any other act of a personal nature necessary to give effect to the rights of the respective parties to such action, as the same may be adjudicated by the court.

(2) When any judgment or decree shall be rendered in such action for a conveyance, release, or acquittance, as above mentioned, and the party or parties against whom the judgment or decree shall be rendered do not comply therewith within the time specified in said judgment or decree for such compliance, such judgment or decree shall have the same operation and effect and be as available as if the conveyance, release, or acquittance had been executed conformably to such judgment or decree.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-108. Prerequisites to decree against defendant not present. Before plaintiff shall be entitled to a decree in such action against any defendant who shall not appear therein, he must produce evidence sufficient to prima facie entitle him to relief, and relief shall be granted only to the extent to which such evidence shall prima facie prove him to be entitled to the same; but this provision shall not affect the procedure in or manner of trial of such actions as between the plaintiff and any defendant who shall appear in such action.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9487, R.C.M. 1921; amd. Sec. 2, Ch. 55, L. 1923; re-en. Sec. 9487, R.C.M. 1935; R.C.M. 1947, 93-6210(part).

70-28-109. Who bound by judgment. Every person made a defendant to such action by name and every unknown claimant or possible claimant upon whom service has been made by publication, in accordance with Rule 4, M.R.Civ.P., and who has not appeared in such action shall be bound by the judgment or decree entered in such action, subject to the right of any such defendants to apply for relief in any manner provided by the statutes applicable to the case of a defaulting defendant served only by publication.

History: En. Sec. 2, Ch. 113, L. 1915; re-en. Sec. 9488, R.C.M. 1921; re-en. Sec. 9488, R.C.M. 1935; R.C.M. 1947, 93-6211.

70-28-110. When value of improvements may be allowed as setoff. When damages are claimed for withholding the property recovered upon which permanent improvements have been made by a defendant or those under whom he claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value of such improvements must be allowed as setoff against such damage.

History: En. Sec. 236, p. 92, Bannack Stat.; re-en. Sec. 257, p. 188, L. 1867; re-en. Sec. 306, p. 94, Cod. Stat. 1871; re-en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; re-en. Sec. 1313, C. Civ. Proc. 1895; re-en. Sec. 6873, Rev. C. 1907; re-en. Sec. 9491, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 741; re-en. Sec. 9491, R.C.M. 1935; R.C.M. 1947, 93-6215.

70-28-111. Termination of plaintiff's right during action — damages for withholding. In an action for the recovery of real property where the plaintiff shows a right to recover at the time the action was commenced but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact and the plaintiff may recover damages for withholding the property.

History: En. Sec. 235, p. 92, Bannack Stat.; re-en. Sec. 256, p. 188, L. 1867; re-en. Sec. 305, p. 94, Cod. Stat. 1871; re-en. Sec. 356, p. 138, L. 1877; re-en. Sec. 356, 1st Div. Rev. Stat. 1879; re-en. Sec. 368, 1st Div. Comp. Stat. 1887; re-en. Sec. 1312, C. Civ. Proc. 1895; re-en. Sec. 6872, Rev. C. 1907; re-en. Sec. 9490, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 740; re-en. Sec. 9490, R.C.M. 1935; R.C.M. 1947, 93-6214.

70-28-112. Costs. If the defendant in such action disclaim in his answer any interest or estate in the property or suffer judgment to be taken against him without answer, the plaintiff shall not recover costs. But in actions which the plaintiff has brought under section 2326 of the Revised Statutes of the United States to determine an adverse claim, the plaintiff shall recover costs if the defendant does not relinquish in the proper United States land office or disclaim in writing any interest or estate in the property within 20 days from the filing of said adverse claim in such land office.

History: En. Sec. 234, p. 92, Bannack Stat.; re-en. Sec. 255, p. 188, L. 1867; re-en. Sec. 304, p. 93, Cod. Stat. 1871; re-en. Sec. 355, p. 138, L. 1877; re-en. Sec. 355, 1st Div. Rev. Stat. 1879; amd. Sec. 367, 1st Div. Comp. Stat. 1887; re-en. Sec. 1311, C. Civ. Proc. 1895; re-en. Sec. 6871, Rev. C. 1907; re-en. Sec. 9489, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 739; re-en. Sec. 9489, R.C.M. 1935; R.C.M. 1947, 93-6213.

70-28-113. Order for survey or measurement. (1) The court in which an action is pending for the recovery of real property or mining claims or for damages for an injury or to quiet title or to determine adverse claims thereto or a judge thereof may on motion, upon notice by either party, for good cause shown, grant an order allowing to such party the right to enter into or upon the property or mining claim and make survey or measurement thereof or of any tunnels, shafts, or drifts therein for the purpose of the action even though entry for such purpose has to be made through other lands or mining claims belonging to parties to the action.

(2) The order must describe the property, and a copy thereof must be served on the owner or occupant, and thereupon such party may enter the property, with necessary surveyors and assistants, and make such survey and measurement; but if unnecessary damage be done to the property, he is liable therefor.

History: (1)En. Sec. 237, p. 92, Bannack Stat.; re-en. Sec. 258, p. 188, L. 1867; re-en. Sec. 307, p. 95, Cod. Stat. 1871; en. Sec. 357, p. 138, L. 1877; re-en. Sec. 357, 1st Div. Rev. Stat. 1879; re-en. Sec. 369, 1st Div. Comp. Stat. 1887; amd. Sec. 1314, C. Civ. Proc. 1895; re-en. Sec. 6874, Rev. C. 1907; re-en. Sec. 9492, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 742; re-en. Sec. 9492, R.C.M. 1935; Sec. 93-6216, R.C.M. 1947; (2)En. Sec. 238, p. 92, Bannack

Stat.; re-en. Sec. 259, p. 188, L. 1867; re-en. Sec. 308, p. 95, Cod. Stat. 1871; re-en. Sec. 358, p. 139, L. 1877; re-en. Sec. 358, 1st Div. Rev. Stat. 1879; re-en. Sec. 370, 1st Div. Comp. Stat. 1887; re-en. Sec. 1315, C. Civ. Proc. 1895; re-en. Sec. 6875, Rev. C. 1907; re-en. Sec. 9493, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 743; re-en. Sec. 9493, R.C.M. 1935; Sec 93-6217, R.C.M. 1947; R.C.M. 1947, 93-6216, 93-6217.

Part 2

Property Granted to Heirs of Deceased Entryman — Quiet Title

70-28-201. Action authorized. Whenever the government of the United States has granted lands in the state of Montana to the heirs of a deceased entryman, any person who claims an estate of inheritance or interest in such lands may bring and maintain an action in rem against all the world in the district court for the county in which such real property is situated to establish his title to such property and to determine all adverse claims thereto. Any number of separate parcels of land claimed by the plaintiff may be included in the same action.

History: En. Sec. 1, Ch. 15, L. 1915; re-en. Sec. 9501, R.C.M. 1921; re-en. Sec. 9501, R.C.M. 1935; R.C.M. 1947, 93-6225.

70-28-202. General procedural provisions applicable. Except as herein otherwise provided, all the provisions and rulings of law relating to evidence, pleading, practice, new trials, and appeals applicable to other civil actions shall apply to the actions hereby authorized.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

70-28-203. Remedies cumulative. The remedies provided for by this part shall be deemed cumulative and in addition to any other remedy now or hereafter provided by law for quieting or establishing title to real property.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9515, R.C.M. 1921; re-en. Sec. 9515, R.C.M. 1935; R.C.M. 1947, 93-6239.

70-28-204. Executor, administrator, or guardian as party. An executor, administrator, or guardian or other person claiming an interest by deed of conveyance or otherwise may maintain, as plaintiff, and may appear and defend in the action herein provided for.

History: En. Sec. 14, Ch. 15, L. 1915; re-en. Sec. 9514, R.C.M. 1921; re-en. Sec. 9514, R.C.M. 1935; R.C.M. 1947, 93-6238.

70-28-205. Complaint. The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiffs and the defendants shall be described as "all persons claiming any interest in or lien upon the real property herein described or any part thereof" and which shall:

(1) contain a statement of the facts enumerated in 70-28-201;
(2) contain a particular description of such real property; and

(3) specify the estate, title, or interest of the plaintiff therein.

History: En. Sec. 2, Ch. 15, L. 1915; re-en. Sec. 9502, R.C.M. 1921; re-en. Sec. 9502, R.C.M. 1935; R.C.M. 1947, 93-6226.

70-28-206. Affidavit to accompany complaint. (1) At the time of filing the complaint, the plaintiff shall file with the same his affidavit fully and explicitly setting forth and showing:

(a) the character of his estate, right, title, interest, or claim in the property;

(b) whether or not he has ever made any conveyance of his interest in said property or any part thereof and, if so, when and to whom; also a statement of any and all existing mortgages, deeds of trust, judgments, or other liens thereon;

(c) when and where the deceased entryman of said property died;

(d) what kin or relationship the claimant bore to the entryman at the time of his death; and

(e) the names and residences of any other persons who are next of kin or entitled to succeed to any portion of the lands, the subject of said action, and the names of and residences of all persons who have liens upon the property or any part thereof adversely to the plaintiff if he knows or has been informed or has been able to discover any such person.

(2) If the plaintiff is unable to state any one or more of the matters herein required, he shall set forth and show fully and explicitly the reasons for such inability.

(3) Such affidavit shall constitute a part of the judicial record.

(4) If the plaintiff be a person under guardianship, the affidavit shall be made by his guardian.

History: En. Sec. 3, Ch. 15, L. 1915; re-en. Sec. 9503, R.C.M. 1921; re-en. Sec. 9503, R.C.M. 1935; R.C.M. 1947, 93-6227; amd. Sec. 183, Ch. 575, L. 1981.

70-28-207. Summons — issuance and form. Upon the filing of the complaint and affidavit, a summons must be issued under the seal of the court, which shall contain the name of the court and county in which the action is brought, the name of the plaintiff, and the particular description of the real property involved and shall be directed to "all persons claiming any interest in or lien upon the real property herein described or any part thereof" as defendants and shall be substantially in the following form:

"In the district court of the .... judicial district of the state of Montana, in and for the county of ..... Plaintiff, vs. all persons claiming any interest in or lien upon the real property herein described or any part thereof, defendants.

The state of Montana to all persons claiming any interest in or lien upon the real property herein described or any part thereof, defendants, Greeting:

You are hereby required to appear and answer the complaint of ...., plaintiff, filed with the clerk of the above-entitled court, within 60 days after the first publication of this summons, and set forth what interest or lien, if any, you have in or upon that certain real property or any part thereof situated in the county of ...., state of Montana, particularly described as follows: (Here insert description.)

And you are hereby notified that, unless you so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint, to wit: (Here insert a statement of the relief so demanded.)

Witness my hand and the seal of said court this .... day of ...., A.D. 19...

..............., Clerk"

History: En. Sec. 4, Ch. 15, L. 1915; re-en. Sec. 9504, R.C.M. 1921; re-en. Sec. 9504, R.C.M. 1935; R.C.M. 1947, 93-6228.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-208. Publication and posting of summons. (1) The summons shall be published in a newspaper of general circulation published in the county in which the action is brought. The newspaper in which such publication is to be made shall be designated by an order of the court or judge thereof to be signed and filed with the clerk. No other order for the publication of the summons shall be necessary, nor shall any affidavit therefor be required, nor need any copy of the complaint be served, except as hereinafter required. The summons shall be published at least once a week for a period of 5 weeks and to each publication thereof shall be appended a memorandum, signed by the plaintiff's attorney, in substance as follows "The following persons are said to claim an interest in or lien upon said property, adverse to plaintiff." (Give names and addresses as above provided.)

(2) A copy of the summons together with a copy of the foregoing memorandum shall be posted in a conspicuous place on each separate parcel of the property described in the complaint within 10 days after the first publication of the summons.

History: En. Sec. 5, Ch. 15, L. 1915; re-en. Sec. 9505, R.C.M. 1921; re-en. Sec. 9505, R.C.M. 1935; R.C.M. 1947, 93-6229.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-209. Personal service of summons — service by mail. (1) If the affidavit discloses the name of any person next of kin or relationship to the deceased entryman or entitled to succeed to any part of said property or the name of a person who claims or may claim an interest by mortgage, trust deed, judgment, or other lien, the summons shall also be personally served upon such person, if he can be found within the state, together with a copy of the complaint and a copy of said affidavit, during the period of the publication of the summons, and to the copy of the summons delivered to any such person there shall be appended a copy of the memorandum provided in 70-28-208.

(2) If such person resides out of the state, a copy of the summons, memorandum, complaint, and affidavit shall be, within 10 days after the first publication of the summons, deposited in the United States post office, enclosed in a sealed envelope, postage prepaid, addressed to such person at the address given in the affidavit or, if no address be given therein, then at the county seat of the county in which the action was brought. If such person resides within the state and could not with due diligence be found within the

state within the period of the publication of the summons, then said notice aforesaid shall be mailed to him, as above provided, forthwith upon the expiration of said period of said publication.

History: En. Sec. 6, Ch. 15, L. 1915; re-en. Sec. 9506, R.C.M. 1921; re-en. Sec. 9506, R.C.M. 1935; R.C.M. 1947, 93-6230.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-210. Jurisdiction acquired by service — complete. Upon the completion of the publication and posting of the summons and its service upon and mailing to the persons, if any, upon whom it is hereby directed to be so specially served, the court shall have full and complete jurisdiction over the plaintiff and the property and of the person of every one having or claiming any estate, right, title, or interest in or to or lien upon such property or any part thereof and shall be deemed to have obtained the possession and control of said property for the purposes of the action and shall have full and complete jurisdiction to render the judgment therein which is provided for in this part.

History: En. Sec. 7, Ch. 15, L. 1915; re-en. Sec. 9507, R.C.M. 1921; re-en. Sec. 9507, R.C.M. 1935; R.C.M. 1947, 93-6231.

70-28-211. Depositions. (1) At any time after the issuance of the summons, any party to the action may take depositions therein in conformity to law, upon notice to the adverse party sought to be bound by such depositions and who has appeared in the action, if any, and upon notice filed with the clerk.

(2) The depositions may be used by any party against any other party giving or receiving the notice (except the clerk), subject to all just exceptions.

History: En. Sec. 12, Ch. 15, L. 1915; re-en. Sec. 9512, R.C.M. 1921; re-en. Sec. 9512, R.C.M. 1935; R.C.M. 1947, 93-6236(part).

Cross-References

Depositions, Rules 27, 28, 30, 31, M.R.Civ.P. (see Title 25, ch. 20).

70-28-212. Time for appearance by defendant — answer. At any time within the first 60 days from the first publication of the summons or within such further time, not exceeding 30 days, as the court may for good cause grant, any person having or claiming any estate, right, title, or interest in or to or lien upon said property or any part thereof may appear and make himself a party to the action by pleading to the complaint. All answers must be verified and set forth specifically the kin or relationship of the deceased entryman and the estate, right, title, interest, or lien so claimed.

History: En. Sec. 8, Ch. 15, L. 1915; re-en. Sec. 9508, R.C.M. 1921; re-en. Sec. 9508, R.C.M. 1935; R.C.M. 1947, 93-6232.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

70-28-213. Recording of notice by plaintiff and defendant. (1) The plaintiff must, at the time of filing the complaint, and every defendant to claim or claiming any affirmative relief must, at the time of filing his answer, record in the office of the county clerk and recorder of the county in which the property is situated a notice of the pendency of the action containing the object of the action or the defense and a particular description of the property affected thereby.

(2) The clerk and recorder shall record the same in a book of the miscellaneous records of his office and make a reference as to the date and time of the filing of such notice and, when recorded, to the book and page record thereof.

History: En. Sec. 9, Ch. 15, L. 1915; re-en. Sec. 9509, R.C.M. 1921; re-en. Sec. 9509, R.C.M. 1935; R.C.M. 1947, 93-6233.

70-28-214. Default judgment prohibited — proof and inquiry required. No judgment in any such action shall be given by default, but the court must require proof of the facts alleged in the complaint and other pleadings, and the court must further make diligent inquiry of the plaintiff and all defendants appearing concerning the next of kin of said deceased entryman, and upon such examination should any heir be discovered who has not been served or who has not appeared, the court may order such heir brought in if necessary for the determination herein provided for.

History: En. Sec. 10, Ch. 15, L. 1915; re-en. Sec. 9510, R.C.M. 1921; re-en. Sec. 9510, R.C.M. 1935; R.C.M. 1947, 93-6234.

70-28-215. Judgment — nature and effect — recording. (1) The judgment shall ascertain and determine the heirship of said deceased entryman and all estates, rights, titles, interests, and claims in and to said property and every part thereof, whether the same be legal or equitable, present or future, vested or contingent, or whether the same consists of mortgages or liens of any description, and shall be binding and conclusive upon every person who, at the time of the commencement of the action, had or claimed to have any estate, right, title, or interest in or to said property or any part thereof and upon every person claiming under him by title subsequent to the commencement of the action.

(2) A certified copy of the judgment in such action shall be recorded in the office of the clerk and recorder of the county in which said action was commenced, and any party or the successor in interest of any party to said action may at his option file for record in the office of the clerk and recorder of such county the entire judicial record in said action.

History: En. Sec. 11, Ch. 15, L. 1915; re-en. Sec. 9511, R.C.M. 1921; re-en. Sec. 9511, R.C.M. 1935; R.C.M. 1947, 93-6235; amd. Sec. 184, Ch. 575, L. 1981.

70-28-216. Subsequent action — notice to original parties required. Whenever judgment in an action hereby authorized shall have been entered as to any real property, no other action relative to the same property or any part thereof maintained under this part shall be tried until proof shall first have been made to the court that all persons who appeared in the first action or their successors in interest have been personally served with the papers mentioned in 70-28-209, either within or without this state, more than 1 month before the time to plead expired.

History: En. Sec. 13, Ch. 15, L. 1915; re-en. Sec. 9513, R.C.M. 1921; re-en. Sec. 9513, R.C.M. 1935; R.C.M. 1947, 93-6237.

Part 3

Entry Townsite Deeds

70-28-301. Entry townsite land defined. "Entry townsite land" means land upon which an entry was made on or before July 1, 1921, by a probate court of any county in the territory or state of Montana for a townsite and a patent for the townsite was issued by the United States to the probate court or judge under the provisions of an act of congress entitled "An Act for the Relief of the Inhabitants of Cities and Towns Upon Public Lands", approved March 2, 1867, or other and subsequent acts of congress relating to entering lands for townsite purposes.

History: En. Sec. 1, Ch. 102, L. 1981.

70-28-302. Petition for deed — qualified claimants. A person may petition for a deed to a lot on entry townsite land from the district court of the county in which the entry townsite land is located if:

(1) the claimant entered the lot and is in possession of the lot; or

(2) the claimant is a successor in interest, by purchase or other lawful method of transferring an interest in land, of a person who originally entered the lot.

History: En. Sec. 2, Ch. 102, L. 1981.

70-28-303. Notice requirements. Upon petition by a claimant for a deed to a lot on entry townsite land, the claimant shall provide published notice of his claim, notice filed with the county clerk and recorder, and personal service as may be required for quiet title actions under Title 70, chapter 28, part 1.

History: En. Sec. 3, Ch. 102, L. 1981.

70-28-304. Judge to issue deed — requirements. If there are no valid conflicting claims to the lot on the entry townsite, the district court judge, as ex officio probate judge of the county, shall issue the claimant a good and sufficient deed for the lot on the entry townsite land upon finding in a hearing that:

(1) the petitioner is a qualified claimant under 70-28-302; and

(2) (a) no deed has been issued by a probate or district court judge of the county where the entry townsite land is located for the claimed lot; or

(b) a deed for the claimed lot has been issued but not recorded and has been lost or cannot be found.

History: En. Sec. 4, Ch. 102, L. 1981.

CHAPTER 29

PARTITION OF REAL PROPERTY

Part 1 — Preliminary Procedure

70-29-101. Action for partition authorized — who may bring.
70-29-102. Action by minor.
70-29-103. Complaint — contents.
70-29-104. Who must be parties — permissible plaintiffs.
70-29-105. Who may be joined as defendants.
70-29-106. Unnecessary to join grantees or lienholders not of record.
70-29-107. Lienholders of record as parties.
70-29-108. Lienholders of record to be notified.
70-29-109. Notice of action to be filed with clerk — lis pendens.
70-29-110. Summons — to whom directed.
70-29-111. Unknown and out-of-state parties — how served.
70-29-112. Answer — contents.
70-29-113. Death or incompetency of parties — proceedings not delayed.

Part 2 — Trial and Judgment

70-29-201. Trial of title or interest of parties.
70-29-202. Court to order sale or partition — appointment of referees.
70-29-203. Determination of title required before judgment of sale.
70-29-204. Partial partition.
70-29-205. Partition according to rights of parties — roads.
70-29-206. Procedure in relation to lots and subdivisions.
70-29-207. Allotment of shares of land — improvements.
70-29-208. Allotment of land to grantee of tenant in common.
70-29-209. Compensation of one party by another in certain cases of partition.
70-29-210. Consent of guardian to share of ward.
70-29-211. Referees to make report.
70-29-212. Judgment upon confirmation of report — effect.
70-29-213. Judgment not to affect certain tenants for years.
70-29-214. Status of estate for life or years when partial sale ordered.
70-29-215. Lien on undivided interest — status after partition.
70-29-216. Abstract of title — when cost of allowed — filing and inspection.
70-29-217. Abstract — how made and verified.
70-29-218. Costs of partition — apportionment among parties — lien.
70-29-219. Expenses of referees and surveyor.
70-29-220. Disbursements by party — interest allowed.
70-29-221. Expenses of previous litigation.

Part 3 — Sale and Disposition of Proceeds

70-29-301. Sale to be at public auction — notice.
70-29-302. Terms of sale to be made known.
70-29-303. Who may not be purchasers.
70-29-304. Party or encumbrancer as purchaser.
70-29-305. Court to direct terms of credit and investment.
70-29-306. Security for sales on credit.
70-29-307. Security taken and investment made in name of clerk.
70-29-308. Agreement of parties as to security.
70-29-309. Referees' report of sale.
70-29-310. Execution of conveyances and taking of security.
70-29-311. Conveyances to be recorded — bar against parties.
70-29-312 through 70-29-320 reserved.

70-29-321. Priorities for application of proceeds.
70-29-322. Other securities to be exhausted first.
70-29-323. Disposition of proceeds generally.
70-29-324. Continuation of action when proceeds paid into court.
70-29-325. Future interests — ascertainment — share of proceeds.
70-29-326. Tenant for life or years — compensation upon sale.
70-29-327. Minor's share of proceeds — payment to guardian.
70-29-328. Incompetent's share of proceeds — payment to guardian.
70-29-329. Proceeds of sale belonging to persons unknown or out-of-state — how invested.
70-29-330. Duty of clerk as to security and investments.

Part 1

Preliminary Procedure

70-29-101. Action for partition authorized — who may bring. When several cotenants hold and are in possession of real property as joint tenants or tenants in common, in which one or more of them have an estate of inheritance or for life or lives or for years, an action may be brought by one or more of such persons for a partition thereof, according to the respective rights of the persons interested therein, and for a sale of such property or a part thereof if it appears that a partition cannot be made without a great prejudice to the owners.

History: En. Sec. 492, p. 140, Bannack Stat.; re-en. Sec. 264, p. 190, L. 1867; re-en. Sec. 313, p. 97, Cod. Stat. 1871; re-en. Sec. 364, p. 139, L. 1877; re-en. Sec. 364, 1st Div. Rev. Stat. 1879; re-en. Sec. 377, 1st Div. Comp. Stat. 1887; re-en. Sec. 1340, C. Civ. Proc. 1895; re-en. Sec. 6883, Rev. C. 1907; re-en. Sec. 9516, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 752; re-en. Sec. 9516, R.C.M. 1935; R.C.M. 1947, 93-6301.

70-29-102. Action by minor. (1) An action for the partition of real property shall not be brought by a minor, except by the written authority of the district judge of the county in which the property or a part thereof is situated. The authority shall not be given unless the district judge is satisfied, by affidavit or other competent evidence, that the interests of the minor will be promoted by bringing the action.

(2) A judgment for a partition shall not be rendered in such an action unless the court is satisfied that the interests of the minor will be promoted thereby and that fact is expressly recited in the judgment.

(3) A guardian ad litem for a minor party, in an action for partition, can be appointed only by the court or judge and must give an undertaking in a sum fixed by the judge for the faithful discharge of his trust, which undertaking must be approved by the judge and filed with the clerk.

History: En. Sec. 1341, C. Civ. Proc. 1895; re-en. Sec. 6884, Rev. C. 1907; re-en. Sec. 9517, R.C.M. 1921; re-en. Sec. 9517, R.C.M. 1935; R.C.M. 1947, 93-6302; amd. Sec. 4, Ch. 2, L. 1983.

Cross-References

Appointment of guardian, 25-5-301.

Enforcement of minor's rights, 41-1-202.

70-29-103. Complaint — contents. The interests of all the persons in the property, whether such persons be known or unknown, must be set forth in the complaint specifically and particularly, as far as known to the plaintiff; and if one or more of the parties or the share or quantity of interest of any of the parties be unknown to the plaintiff or be uncertain or contingent or the ownership of the inheritance depend upon the executory devise or the remainder be a contingent remainder so that such parties cannot be named, that fact must be set forth in the complaint.

History: En. Sec. 493, p. 140, Bannack Stat.; re-en. Sec. 265, p. 190, L. 1867; re-en. Sec. 314, p. 97, Cod. Stat. 1871; re-en. Sec. 365, p. 139, L. 1877; re-en. Sec. 365, 1st Div. Rev. Stat. 1879; re-en. Sec. 378, 1st Div. Comp. Stat. 1887; re-en. Sec. 1344, C. Civ. Proc. 1895; re-en. Sec. 6887, Rev. C. 1907; re-en. Sec. 9520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 753; re-en. Sec. 9520, R.C.M. 1935; R.C.M. 1947, 93-6305.

70-29-104. Who must be parties — permissible plaintiffs. (1) The following must be parties to an action for partition:

(a) every person having an undivided share, in possession or otherwise, in the property as tenant in fee, for life, or for years;

(b) every person entitled to the reversion, remainder, or inheritance of an undivided share, after the determination of a particular estate therein;

(c) every person who by any contingency contained in a devise or grant or otherwise is or may become entitled to a beneficial interest in an undivided share thereof;

(d) every person having an inchoate right of dower in an undivided share in the property; and

(e) every person having a right of dower in the property or any part thereof which has not been admeasured.

(2) But no person other than a joint tenant or a tenant in common of the property shall be a plaintiff in the action.

History: En. Sec. 1342, C. Civ. Proc. 1895; re-en. Sec. 6885, Rev. C. 1907; re-en. Sec. 9518, R.C.M. 1921; re-en. Sec. 9518, R.C.M. 1935; R.C.M. 1947, 93-6303.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

70-29-105. Who may be joined as defendants. (1) The plaintiff may, at his election, make a tenant in dower, for life or for years, of the entire property or a creditor or other person having a lien or interest which attaches to the entire property a defendant in the action. In that case the final judgment may either award to such a party his or her entire right and interest or the proceeds thereof or may reserve and leave unaffected his or her right or interest or any portion thereof.

(2) A person specified in this section who is not made a party is not affected by the judgment in the action.

History: En. Sec. 1343, C. Civ. Proc. 1895; re-en. Sec. 6886, Rev. C. 1907; re-en. Sec. 9519, R.C.M. 1921; re-en. Sec. 9519, R.C.M. 1935; R.C.M. 1947, 93-6304.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

70-29-106. Unnecessary to join grantees or lienholders not of record. No person having a conveyance of or claiming a lien on the property or some part of it need be made a party to the action unless such conveyance or lien appear of record.

History: **En. Sec. 266, p. 190, L. 1867; re-en. Sec. 315, p. 97, Cod. Stat. 1871; re-en. Sec. 366, p. 140, L. 1877; re-en. Sec. 366, 1st Div. Rev. Stat. 1879; re-en. Sec. 379, 1st Div. Comp. Stat. 1887; re-en. Sec. 1345, C. Civ. Proc. 1895; re-en. Sec. 6888, Rev. C. 1907; re-en. Sec. 9521, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 754; re-en. Sec. 9521, R.C.M. 1935; R.C.M. 1947, 93-6306.**

70-29-107. Lienholders of record as parties. If it appears to the court, by the certificate of the clerk of the court and county clerk and recorder or by the sworn or verified statement of any person who may have examined or searched the records, that there are outstanding liens or encumbrances of record upon such real property or any part or portion thereof which existed and were of record at the time of the commencement of the action, and the persons holding such liens are not made parties to the action, the court must either order such persons to be made parties to the action by an amendment or supplemental complaint or appoint a referee to ascertain whether or not such liens or encumbrances have been paid or, if not paid, what amount remains due thereon and their order among the liens or encumbrances severally held by such persons and the parties to the action and whether the amount remaining due thereon has been secured in any manner and, if secured, the nature and extent of the security.

History: **En. Sec. 501, p. 142, Bannack Stat.; en. Sec. 273, p. 191, L. 1867; re-en. Sec. 322, p. 98, Cod. Stat. 1871; re-en. Sec. 373, p. 142, L. 1877; re-en. Sec. 373, 1st Div. Rev. Stat. 1879; re-en. Sec. 386, 1st Div. Comp. Stat. 1887; re-en. Sec. 1353, C. Civ. Proc. 1895; re-en. Sec. 6896, Rev. C. 1907; re-en. Sec. 9529, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 761; re-en. Sec. 9529, R.C.M. 1935; R.C.M. 1947, 93-6314.**

70-29-108. Lienholders of record to be notified. (1) The plaintiff must cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in 70-29-107, on each person having outstanding liens of record who is not a party to the action to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the amount due or to become due, contingently or absolutely, thereon.

(2) In case such person be absent or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court, in such manner as may be proper.

(3) The report of the referee thereon must be made to the court and must be confirmed, modified, or set aside and a new reference ordered, as the justice of the case may require.

History: **En. Sec. 502, p. 142, Bannack Stat.; re-en. Sec. 274, p. 192, L. 1867; re-en. Sec. 323, p. 99, Cod. Stat. 1871; re-en. Sec. 374, p. 142, L. 1877; re-en. Sec. 374, 1st Div. Rev. Stat. 1879; re-en. Sec. 387, 1st Div. Comp. Stat. 1887; re-en. Sec. 1354, C. Civ. Proc. 1895; re-en. Sec. 6897, Rev. C. 1907; re-en. Sec. 9530, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 762; re-en. Sec. 9530, R.C.M. 1935; R.C.M. 1947, 93-6315.**

70-29-109. Notice of action to be filed with clerk — lis pendens. (1) Immediately after filing the complaint in the district court, the plaintiff must file in the office of the county clerk and recorder of the county or of the several counties in which the property is situated a notice of the pendency of the action containing:

(a) the names of the parties so far as known;

(b) the object of the action; and

(c) a description of the property to be affected thereby.

(2) From the time of filing such notice, all persons shall be deemed to have notice of the pendency of the action.

History: **En. Sec. 495, p. 141, Bannack Stat.; re-en. Sec. 267, p. 190, L. 1867; re-en. Sec. 316, p. 97, Cod. Stat. 1871; re-en. Sec. 367, p. 140, L. 1877; re-en. Sec. 367, 1st Div. Rev. Stat. 1879; re-en. Sec. 380, 1st Div. Comp. Stat. 1887; amd. Sec. 1346, C. Civ. Proc. 1895; re-en. Sec. 6889, Rev. C. 1907; re-en. Sec. 9522, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 755; re-en. Sec. 9522, R.C.M. 1935; R.C.M. 1947, 93-6307.**

70-29-110. Summons — to whom directed. The summons must be directed to all the joint tenants and tenants in common and all persons having an interest in or any liens of record by mortgage, judgment, or otherwise upon the property or upon any particular portion thereof and generally to all persons unknown who have or claim any interest in the property.

History: **En. Sec. 496, p. 141, Bannack Stat.; re-en. Sec. 268, p. 190, L. 1867; re-en. Sec. 317, p. 97, Cod. Stat. 1871; re-en. Sec. 368, p. 140, L. 1877; re-en. Sec. 368, 1st Div. Rev. Stat. 1879; re-en. Sec. 381, 1st Div. Comp. Stat. 1887; re-en. Sec. 1347, C. Civ. Proc. 1895; re-en. Sec. 6890, Rev. C. 1907; re-en. Sec. 9523, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 756; re-en. Sec. 9523, R.C.M. 1935; R.C.M. 1947, 93-6308.**

70-29-111. Unknown and out-of-state parties — how served. (1) If a party having a share or interest is unknown or any one of the known parties resides out of the state or cannot be found therein and such fact is made to appear by affidavit, the summons may be served on such absent or unknown party by publication, as in other cases.

(2) When publication is made, the summons, as published, must be accompanied by a general statement of the nature of the action and a brief description of the property which is the subject of the action.

History: **En. Sec. 497, p. 141, Bannack Stat.; re-en. Sec. 269, p. 191, L. 1867; re-en. Sec. 318, p. 98, C. Stat. 1871; re-en. Sec. 369, p. 140, L. 1877; re-en. Sec. 369, 1st Div. Rev. Stat. 1879; re-en. Sec. 382, 1st Div. Comp. Stat. 1887; amd. Sec. 1348, C. Civ. Proc. 1895; re-en. Sec. 6891, Rev. C. 1907; re-en. Sec. 9524, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 757; re-en. Sec. 9524, R.C.M. 1935; R.C.M. 1947, 93-6309.**

Cross-References

Service by publication, Rule 4D(5), M.R.Civ.P. (see Title 25, ch. 20).

70-29-112. Answer — contents. The defendants who have been personally served with the summons and a copy of the complaint or who have appeared without such service must set forth in their answers, fully and particularly, the origin, nature, and extent of their respective interests in the property, and if such defendants claim a lien on the property by mortgage, judgment, or otherwise, they are deemed to have waived their right to such lien unless they state:

(1) the original amount and date of the same and the sum remaining due thereon;

(2) whether the same has been secured in any other way or not; and

(3) if secured, the nature and extent of such security.

History: En. Sec. 498, p. 141, Bannack Stat.; amd. Sec. 270, p. 191, L. 1867; re-en. Sec. 319, p. 98, Cod. Stat. 1871; re-en. Sec. 370, p. 141, L. 1877; re-en. Sec. 370, 1st Div. Rev. Stat. 1879; re-en. Sec. 383, 1st Div. Comp. Stat. 1887; amd. Sec. 1349, C. Civ. Proc. 1895; re-en. Sec. 6892, Rev. C. 1907; re-en. Sec. 9525, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 758; re-en. Sec. 9525, R.C.M. 1935; R.C.M. 1947, 93-6310.

70-29-113. Death or incompetency of parties — proceedings not delayed. (1) If during the pendency of the action any of the parties dies or becomes seriously mentally ill or otherwise incompetent, the proceedings may not for that cause be delayed or suspended, but the attorney who has appeared for the party may continue to represent such interest. If any party has not appeared by an attorney, the court shall appoint an attorney to represent the interest which was held by the party until his heirs or legal representatives or successors in interest have appeared in the action.

(2) An attorney so appointed shall be allowed by the court a reasonable compensation for his services, which may be taxed as costs against the share or interest represented by the attorney and may be adjudged a lien thereon, in the discretion of the court.

History: En. Sec. 1357, C. Civ. Proc. 1895; re-en. Sec. 6900, Rev. C. 1907; re-en. Sec. 9533, R.C.M. 1921; re-en. Sec. 9533, R.C.M. 1935; R.C.M. 1947, 93-6318; amd. Sec. 23, Ch. 115, L. 1979.

Part 2

Trial and Judgment

70-29-201. Trial of title or interest of parties. The right of the several parties, plaintiff as well as defendant, may be put in issue, tried, and determined in such action. The title or interest of the plaintiff in the property, as stated in the complaint, may be controverted by the answer. The title or interest of any defendant in the property, as stated in the complaint, may also be controverted by his answer or the answer of any other defendant, and the title or interest of any defendant, as stated in his answer, may be controverted by the answer of any other defendant and the issues joined as prescribed in Title 25, which may be tried before a jury if the court so direct.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1350, C. Civ. Proc. 1895; re-en. Sec. 6893, Rev. C. 1907; re-en. Sec. 9526, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 759; re-en. Sec. 9526, R.C.M. 1935; R.C.M. 1947, 93-6311.

70-29-202. Court to order sale or partition — appointment of referees. (1) If it be alleged in the complaint and established by evidence or if it appear by the evidence without such allegation in the complaint to the satisfaction of the court that the property or any part is so situated that the partition cannot be made without great prejudice to the owners, the court may order a sale thereof; otherwise, upon the requisite proofs being made, it must order a partition according to the respective rights of the parties as ascertained by the court and appoint three referees therefor and must designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

(2) The court, with the consent of the parties, may appoint a single referee instead of three referees in the proceedings under the provisions of this chapter, and the single referee, when thus appointed, has all the powers and may perform all the duties required of the three referees.

History: (1)En. Sec. 503, p. 142, Bannack Stat.; re-en. Sec. 275, p. 192, L. 1867; re-en. Sec. 324, p. 99, Cod. Stat. 1871; re-en. Sec. 375, p. 142, L. 1877; re-en. Sec. 375, 1st Div. Rev. Stat. 1879; re-en. Sec. 388, 1st Div. Comp. Stat. 1887; re-en. Sec. 1355, C. Civ. Proc. 1895; re-en. Sec. 6898, Rev. C. 1907; re-en. Sec. 9531, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 763; re-en. Sec. 9531, R.C.M. 1935; Sec. 93-6316, R.C.M. 1947; (2)En. Sec. 537, p. 148, Bannack Stat.; re-en. Sec. 309, p. 196, L. 1867; re-en. Sec. 358, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1395, C. Civ. Proc. 1895; re-en. Sec. 6938, Rev. C. 1907; re-en. Sec. 9571, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 797; re-en. Sec. 9571, R.C.M. 1935; Sec. 93-6356, R.C.M. 1947; R.C.M. 1947, 93-6316, 93-6356.

70-29-203. Determination of title required before judgment of sale. When a sale of the premises is necessary, the title must be ascertained by proof to the satisfaction of the court before the judgment of sale can be made, and where service of the summons has been made by publication, like proof must be required of the right of the absent or unknown parties before such judgment is rendered, except where there are several unknown parties having an interest in the property, their rights may be considered together in the action and not as between themselves.

History: En. Sec. 499, p. 141, Bannack Stat.; re-en. Sec. 271, p. 191, L. 1867; re-en. Sec. 320, p. 98, Cod. Stat. 1871; re-en. Sec. 371, p. 140, L. 1877; re-en. Sec. 371, 1st Div. Rev. Stat. 1879; re-en. Sec. 384, 1st Div. Comp. Stat. 1887; en. Sec. 1351, C. Civ. Proc. 1895; re-en. Sec. 6894, Rev. C. 1907; re-en. Sec. 9527, R.C.M. 1921; re-en. Sec. 9527, R.C.M. 1935; R.C.M. 1947, 93-6312.

70-29-204. Partial partition. Whenever from any cause it is in the opinion of the court impracticable or highly inconvenient to make a complete partition in the first instance among all the parties in interest, the court may first ascertain and determine the shares or interests respectively held by the original cotenants and thereupon adjudge and cause a partition to be made as if such original cotenants were the parties and sole parties in interest and the only parties to the action and thereafter may proceed in like manner to adjudge and make partition separately of each share or portion so ascertained and allotted, as between those claiming under the original tenant to whom the same shall have been so set apart, or may allow them to remain tenants in common thereof, as they may desire.

History: En. Sec. 272, p. 191, L. 1867; re-en. Sec. 321, p. 98, Cod. Stat. 1871; re-en. Sec. 372, p. 141, L. 1877; re-en. Sec. 372, 1st Div. Rev. Stat. 1879; re-en. Sec. 385, 1st Div. Comp. Stat. 1887; re-en. Sec. 1352, C. Civ. Proc. 1895; re-en. Sec. 6895, Rev. C. 1907; re-en. Sec. 9528, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 760; re-en. Sec. 9528, R.C.M. 1935; R.C.M. 1947, 93-6313.

70-29-205. Partition according to rights of parties — roads. (1) In making partition, the referees must divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, pursuant to the provisions of this chapter, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them.

(2) Before making partition or sale, the referees may, whenever it will be for the advantage of those interested, set apart a portion of the property for a way, road, or street, and the portion so set apart shall not be assigned to any of the parties or sold but shall remain an open and public way, road, or street unless the referees shall set the same apart as a private way for the use of the parties interested or some of them, their heirs, and assigns, in which case it shall remain such private way. Whenever the referees have laid out on any tract of land roads sufficient, in the judgment of said referees, to accommodate the public and private wants, they shall report that fact to the court, and upon the confirmation of their report all other roads on said tract shall cease to be public highways.

History: **En. Sec. 504, p. 143, Bannack Stat.; re-en. Sec. 276, p. 192, L. 1867; re-en. Sec. 325, p. 99, Cod. Stat. 1871; re-en. Sec. 376, p. 143, L. 1877; re-en. Sec. 376, 1st Div. Rev. Stat. 1879; re-en. Sec. 389, 1st Div. Comp. Stat. 1887; en. Sec. 1358, C. Civ. Proc. 1895; re-en. Sec. 6901, Rev. C. 1907; re-en. Sec. 9534, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 764; re-en. Sec. 9534, R.C.M. 1935; R.C.M. 1947, 93-6319.**

70-29-206. Procedure in relation to lots and subdivisions. When the site of an incorporated city or town is included within the exterior boundaries of the property to be partitioned, on said fact being established by evidence, the following proceedings shall be had:

(1) The court shall thereupon direct the referees to survey and appraise the entire property to be partitioned by actual lots and subdivisions then existing in the actual possession of the several tenants in common, exclusive of the value of improvements thereon, first setting apart necessary portions of the property for ways, roads, and streets, as in 70-29-205 provided, and to report such survey and separate appraisement on each lot and subdivision to the court. The court may confirm, change, modify, or set aside the report in whole or in part and, if necessary, appoint new referees.

(2) When, after the final confirmation of the report of such survey and appraisement, it shall appear by evidence to the satisfaction of the court that an equitable partition of the whole property is impracticable and a sale of the site of such city, town, or any portion thereof will be for the best interest of the owners of the whole property, it shall order a sale thereof; provided that within 60 days thereafter any tenant in common or tenants in common having improvements erected on any town or city lot or subdivision included in such order of sale shall have the prior right to purchase the same at such appraised valuation and pay into court the amount so appraised as the value thereof, and upon such payment, the title shall vest in such purchaser or purchasers, and the court shall cause to be executed by said referees a deed for such lot or subdivision in fee and in severalty to such purchaser or purchasers. Such further proceedings shall then be had as to the remainder of the property and the money so paid to the court as by this chapter provided.

History: **En. Sec. 1356, C. Civ. Proc. 1895; re-en. Sec. 6899, Rev. C. 1907; re-en. Sec. 9532, R.C.M. 1921; re-en. Sec. 9532, R.C.M. 1935; R.C.M. 1947, 93-6317.**

70-29-207. Allotment of shares of land — improvements. In all cases the court shall direct the referees, in making partition of land, to allot the share of each of the parties owning an interest in the whole or in any part of the premises sought to be partitioned and to locate the share of each cotenant so as to embrace as far as practicable the improvements made by such cotenant upon the property, and the value of the improvements made by the tenants in common must be excluded from the valuation in making allotments, and the land must be valued without regard to such improvements, in case the same can be done without material injury to the rights and interests of the other tenants in common owning such land.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-208. Allotment of land to grantee of tenant in common. Whenever it shall appear in an action for the partition of lands that one or more of the tenants in common, being the owner of an undivided interest in the tract of land sought to be partitioned, has sold to another person a specific tract by metes and bounds out of the common land and executed to the purchaser a deed of conveyance, purporting to convey the whole title to such specific tract to the purchaser in fee and in severalty, the land described in such deed shall be allotted and set apart in partition to such purchaser, his heirs, or assigns or in such other manner as shall make such deed effectual as a conveyance of the whole title to such segregated parcel if such tract or tracts of land can be so allotted or set apart without material injury to the rights and interests of the other cotenants who may not have joined in such conveyance.

History: En. Sec. 1359, C. Civ. Proc. 1895; re-en. Sec. 6902, Rev. C. 1907; re-en. Sec. 9535, R.C.M. 1921; re-en. Sec. 9535, R.C.M. 1935; R.C.M. 1947, 93-6320(part).

70-29-209. Compensation of one party by another in certain cases of partition. (1) When it appears that a partition cannot be made equal between the parties according to their respective rights without prejudice to the rights and interests of some of them and a partition be ordered, the court may adjudge compensation to be made by one party to another on account of the inequality, but such compensation shall not be required to be made to others by owners unknown or by a minor unless it appears that such minor has personal property sufficient for that purpose and that his interest will be promoted thereby.

(2) In all cases the court has power to make compensatory adjustment between the respective parties according to the ordinary principles of equity.

History: En. Sec. 532, p. 147, Bannack Stat.; re-en. Sec. 304, p. 196, L. 1867; re-en. Sec. 353, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1387, C. Civ. Proc. 1895; re-en. Sec. 6930, Rev. C. 1907; re-en. Sec. 9563, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 792; re-en. Sec. 9563, R.C.M. 1935; R.C.M. 1947, 93-6348; amd. Sec. 5, Ch. 2, L. 1983.

70-29-210. Consent of guardian to share of ward. The general guardian of a minor and the guardian entitled to the custody and management of the estate of a seriously mentally ill person or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize his being made a party to an action, may agree upon the share to be set off to such minor or other person entitled and may execute a release, in his behalf, to the owners of the shares of the parts to which they may be respectively entitled, upon an order of the court.

History: En. Sec. 535, p. 148, Bannack Stat.; re-en. Sec. 307, p. 196, L. 1867; re-en. Sec. 356, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1390, C. Civ. Proc. 1895; re-en. Sec. 6933, Rev. C. 1907; re-en. Sec. 9566, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 795; re-en. Sec. 9566, R.C.M. 1935; R.C.M. 1947, 93-6351; amd. Sec. 24, Ch. 115, L. 1979; amd. Sec. 6, Ch. 2, L. 1983.

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

Persons under disability — supplementary provisions, Title 72, ch. 13.

70-29-211. Referees to make report. The referees must make a report of their proceedings, specifying therein the manner in which they executed their trust and describing the property divided and the shares allotted to each party with a particular description of each share.

History: En. Sec. 505, p. 143, Bannack Stat.; re-en. Sec. 277, p. 192, L. 1867; re-en. Sec. 326, p. 99, Cod. Stat. 1871; re-en. Sec. 377, p. 143, L. 1877; re-en. Sec. 377, 1st Div. Rev. Stat. 1879; re-en. Sec. 390, 1st Div. Comp. Stat. 1887; re-en. Sec. 1360, C. Civ. Proc. 1895; re-en. Sec. 6903, Rev. C. 1907; re-en. Sec. 9536, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 765; re-en. Sec. 9536, R.C.M. 1935; R.C.M. 1947, 93-6321.

70-29-212. Judgment upon confirmation of report — effect. (1) The court may confirm, change, modify, or set aside the report and if necessary appoint new referees.

(2) Upon the report being confirmed, judgment must be rendered that such partition be effectual forever, which judgment is binding and conclusive on all:

(a) persons named as parties to the action and their legal representatives, who have at the time any interest in the property divided or any part thereof, as owners in fee or as tenants for life or for years or as entitled to the reversion, remainder, or the inheritance of such property or any part thereof after the determination of a particular estate therein, and who by any contingency may be entitled to a beneficial interest in the property or who have an interest in any undivided share thereof, as tenants for years or for life;

(b) persons interested in the property, who may be unknown, to whom notice has been given of the action for partition by publication;

(c) other persons claiming from such parties or persons or either of them.

(3) No judgment is invalidated by reason of the death of any party before final judgment or decree, but such judgment or decree is as conclusive against the heirs, legal representatives, or assigns of such decedent as if it had been entered before his death.

History: En. Sec. 506, p. 143, Bannack Stat.; amd. Sec. 278, p. 192, L. 1867; re-en. Sec. 327, p. 100, Cod. Stat. 1871; amd. Sec. 378, p. 143, L. 1877; re-en. Sec. 378, 1st Div. Rev. Stat. 1879; re-en. Sec. 391, 1st Div. Comp. Stat. 1887; en. Sec. 1361, C. Civ. Proc. 1895; re-en. Sec. 6904, Rev. C. 1907; re-en. Sec. 9537, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 766; re-en. Sec. 9537, R.C.M. 1935; R.C.M. 1947, 93-6322.

70-29-213. Judgment not to affect certain tenants for years. The judgment does not affect tenants for years, less than 10, to the whole of the property which is the subject of the partition.

History: En. Sec. 507, p. 143, Bannack Stat.; re-en. Sec. 279, p. 193, L. 1867; re-en. Sec. 328, p. 100, Cod. Stat. 1871; re-en. Sec. 379, p. 144, L. 1877; re-en. Sec. 379, 1st Div. Rev. Stat. 1879; re-en. Sec. 392, 1st Div. Comp. Stat. 1887; re-en. Sec. 1362, C. Civ. Proc.

1895; re-en. Sec. 6905, Rev. C. 1907; re-en. Sec. 9538, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 767; re-en. Sec. 9538, R.C.M. 1935; R.C.M. 1947, 93-6323.

70-29-214. Status of estate for life or years when partial sale ordered. When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

History: En. Sec. 510, p. 143, Bannack Stat.; re-en. Sec. 282, p. 193, L. 1867; re-en. Sec. 331, p. 100, Cod. Stat. 1871; re-en. Sec. 382, p. 144, L. 1877; re-en. Sec. 382, 1st Div. Rev. Stat. 1879; re-en. Sec. 395, 1st Div. Comp. Stat. 1887; re-en. Sec. 1365, C. Civ. Proc. 1895; re-en. Sec. 6908, Rev. C. 1907; re-en. Sec. 9541, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 770; re-en. Sec. 9541, R.C.M. 1935; R.C.M. 1947, 93-6326.

70-29-215. Lien on undivided interest — status after partition. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thenceforth be a charge only on the share assigned to such party, but such share must be first charged with its just proportion of the costs of the partition in preference to such lien.

History: En. Sec. 509, p. 143, Bannack Stat.; re-en. Sec. 281, p. 193, L. 1867; re-en. Sec. 330, p. 100, Cod. Stat. 1871; re-en. Sec. 381, p. 144, L. 1877; re-en. Sec. 381, 1st Div. Rev. Stat. 1879; re-en. Sec. 394, 1st Div. Comp. Stat. 1887; re-en. Sec. 1364, C. Civ. Proc. 1895; re-en. Sec. 6907, Rev. C. 1907; re-en. Sec. 9540, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 769; re-en. Sec. 9540, R.C.M. 1935; R.C.M. 1947, 93-6325.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

70-29-216. Abstract of title — when cost of allowed — filing and inspection. (1) If it appears to the court that it was necessary to have made an abstract of the title to the property to be partitioned and such abstract shall have been procured by the plaintiff or if the plaintiff shall have failed to have the same made before the commencement of the action and any one of the defendants shall have had such abstract afterward made, the cost of the abstract, with interest thereon from the time the same is subject to the inspection of the respective parties to the action, must be allowed and taxed.

(2) Whenever such abstract is procured by the plaintiff, before the commencement of the action he must file with his complaint a notice that an abstract of the title has been made and is subject to the inspection and use of all the parties to the action, designating therein where the abstract will be kept for inspection. But if the plaintiff shall have failed to procure such abstract before commencing the action and any defendant shall procure the same to be made, he shall, as soon as he has directed it to be made, file a notice thereof in the action with the clerk of the court, stating who is making the same and where it will be kept when finished.

(3) The court or judge thereof may direct, from time to time during the progress of the action, who shall have the custody of the abstract.

History: En. Sec. 1397, C. Civ. Proc. 1895; re-en. Sec. 6940, Rev. C. 1907; re-en. Sec. 9573, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 799; re-en. Sec. 9573, R.C.M. 1935; R.C.M. 1947, 93-6358.

70-29-217. Abstract — how made and verified. The abstract mentioned in 70-29-216 may be made by any competent searcher of records and need not be certified by the county clerk and recorder or other officer, but instead thereof it must be verified by the affidavit of the person making it to the effect that he believes it to be correct; but the same may be corrected from time to time, if found incorrect, under the direction of the court.

History: En. Sec. 1398, C. Civ. Proc. 1895; re-en. Sec. 6941, Rev. C. 1907; re-en. Sec. 9574, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 800; re-en. Sec. 9574, R.C.M. 1935; R.C.M. 1947, 93-6359.

70-29-218. Costs of partition — apportionment among parties — lien. The costs of partition, including reasonable counsel fees, expended by the plaintiff or either of the defendants for the common benefit, fees of referees, or other disbursements must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares and the judgment may be enforced by execution against such shares and against other property held by the respective parties. When, however, litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto or any of them.

History: En. Sec. 536, p. 148, Bannack Stat.; re-en. Sec. 308, p. 196, L. 1867; re-en. Sec. 357, p. 104, L. 1871; rep. Sec. 674, p. 215, L. 1877; en. Sec. 1394, C. Civ. Proc. 1895; re-en. Sec. 6937, Rev. C. 1907; re-en. Sec. 9570, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 796; re-en. Sec. 9570, R.C.M. 1935; R.C.M. 1947, 93-6355.

Cross-References

Civil procedure — costs, Title 25, ch. 10.

70-29-219. Expenses of referees and surveyor. The expenses of the referees, including those of a surveyor and his assistants, when employed, must be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by the court in its discretion to the referees, must be apportioned among the different parties to the action equitably.

History: En. Sec. 508, p. 143, Bannack Stat.; re-en. Sec. 280, p. 193, L. 1867; re-en. Sec. 329, p. 100, Cod. Stat. 1871; re-en. Sec. 380, p. 144, L. 1877; re-en. Sec. 380, 1st Div. Rev. Stat. 1879; re-en. Sec. 393, 1st Div. Comp. Stat. 1887; re-en. Sec. 1363, C. Civ. Proc. 1895; re-en. Sec. 6906, Rev. C. 1907; re-en. Sec. 9539, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 768; re-en. Sec. 9539, R.C.M. 1935; R.C.M. 1947, 93-6324.

70-29-220. Disbursements by party — interest allowed. Whenever during the progress of the action for partition any disbursements shall have been made under the direction of the court or the judge thereof by a party thereto, interest must be allowed thereon from the time of making such disbursements.

History: En. Sec. 1399, C. Civ. Proc. 1895; re-en. Sec. 6942, Rev. C. 1907; re-en. Sec. 9575, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 801; re-en. Sec. 9575, R.C.M. 1935; R.C.M. 1947, 93-6360.

70-29-221. Expenses of previous litigation. If it appear that other actions or proceedings have been necessarily prosecuted or defended by any one of the tenants in common for the protection, confirmation, or perfecting of the title or setting the boundaries or making a survey or surveys of the estate partitioned, the court shall allow to the parties to the action who have paid the expense of such litigation or other proceedings all the expenses necessarily incurred therein, except counsel fees, which shall have accrued to the common benefit of the other tenants in common, with interest thereon from the date of making the expenditures, and the same must be pleaded and allowed by the court and included in the final judgment and shall be a lien upon the share of each tenant, respectively, in proportion to his interest and shall be enforced in the same manner as taxable costs of partition are taxed and collected.

History: **En. Sec. 1396, C. Civ. Proc. 1895; re-en. Sec. 6939, Rev. C. 1907; re-en. Sec. 9572, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 798; re-en. Sec. 9572, R.C.M. 1935; R.C.M. 1947, 93-6357.**

Part 3

Sale and Disposition of Proceeds

70-29-301. Sale to be at public auction — notice. All sales of real property made by referees under this chapter must be made at public auction to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice must state the terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that must be stated in the notice.

History: **En. Sec. 515, p. 145, Bannack Stat.; re-en. Sec. 287, p. 194, L. 1867; re-en. Sec. 336, p. 101, Cod. Stat. 1871; re-en. Sec. 387, p. 146, L. 1877; re-en. Sec. 387, 1st Div. Rev. Stat. 1879; re-en. Sec. 400, 1st Div. Comp. Stat. 1887; re-en. Sec. 1370, C. Civ. Proc. 1895; re-en. Sec. 6913, Rev. C. 1907; re-en. Sec. 9546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 775; re-en. Sec. 9546, R.C.M. 1935; R.C.M. 1947, 93-6331.**

Cross-References

Notice of sale on execution, 25-13-701.

70-29-302. Terms of sale to be made known. In all cases of sales of property, the terms must be made known at the time; and if the premises consist of distinct farms and lots, they must be sold separately.

History: **En. Sec. 522, p. 146, Bannack Stat.; re-en. Sec. 294, p. 195, L. 1867; re-en. Sec. 343, p. 102, Cod. Stat. 1871; re-en. Sec. 394, p. 147, L. 1877; re-en. Sec. 394, 1st Div. Rev. Stat. 1879; re-en. Sec. 407, 1st Div. Comp. Stat. 1887; re-en. Sec. 1377, C. Civ. Proc. 1895; re-en. Sec. 6920, Rev. C. 1907; re-en. Sec. 9553, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 782; re-en. Sec. 9553, R.C.M. 1935; R.C.M. 1947, 93-6338.**

70-29-303. Who may not be purchasers. (1) Neither of the referees nor any person for the benefit of either of them can be interested in any purchase, nor can a guardian of a minor party be interested in the purchase of any real property being the subject of the action except for the benefit of the minor.

(2) All sales contrary to the provisions of this section are void.

History: **En. Sec. 523, p. 146, Bannack Stat.; re-en. Sec. 295, p. 195, L. 1867; re-en. Sec. 344, p. 102, Cod. Stat. 1871; re-en. Sec. 395, p. 147, L. 1877; re-en. Sec. 395, 1st Div. Rev. Stat. 1879; re-en. Sec. 408, 1st Div. Comp. Stat. 1887; re-en. Sec. 1378, C. Civ. Proc. 1895; re-en. Sec. 6921, Rev. C. 1907; re-en. Sec. 9554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 783; re-en. Sec. 9554, R.C.M. 1935; R.C.M. 1947, 93-6339; amd. Sec. 7, Ch. 2, L. 1983.**

70-29-304. Party or encumbrancer as purchaser. When a party entitled to a share of the property or an encumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

History: En. Sec. 526, p. 146, Bannack Stat.; re-en. Sec. 298, p. 195, L. 1867; re-en. Sec. 347, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1381, C. Civ. Proc. 1895; re-en. Sec. 6924, Rev. C. 1907; re-en. Sec. 9557, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 786; re-en. Sec. 9557, R.C.M. 1935; R.C.M. 1947, 93-6342.

70-29-305. Court to direct terms of credit and investment. The court must, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit and for that portion of which the purchase money is required by the provisions herein contained to be invested for the benefit of unknown owners, minors, or parties out of this state.

History: En. Sec. 516, p. 145, Bannack Stat.; re-en. Sec. 288, p. 194, L. 1867; re-en. Sec. 337, p. 101, Cod. Stat. 1871; re-en. Sec. 388, p. 146, L. 1877; re-en. Sec. 388, 1st Div. Rev. Stat. 1879; re-en. Sec. 401, 1st Div. Comp. Stat. 1887; re-en. Sec. 1371, C. Civ. Proc. 1895; re-en. Sec. 6914, Rev. C. 1907; re-en. Sec. 9547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 776; re-en. Sec. 9547, R.C.M. 1935; R.C.M. 1947, 93-6332; amd. Sec. 8, Ch. 2, L. 1983.

70-29-306. Security for sales on credit. The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit for the:

(1) shares of any known owner of full age, in the name of such owner;

(2) shares of a minor, in the name of the guardian of such minor; and

(3) other shares, in the name of the clerk of the court of the county and his successors in office.

History: En. Sec. 517, p. 145, Bannack Stat.; re-en. Sec. 289, p. 194, L. 1867; re-en. Sec. 338, p. 101, Cod. Stat. 1871; re-en. Sec. 389, p. 146, L. 1877; re-en. Sec. 389, 1st Div. Rev. Stat. 1879; re-en. Sec. 402, 1st Div. Comp. Stat. 1887; re-en. Sec. 1372, C. Civ. Proc. 1895; re-en. Sec. 6915, Rev. C. 1907; re-en. Sec. 9548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 777; re-en. Sec. 9548, R.C.M. 1935; R.C.M. 1947, 93-6333; amd. Sec. 9, Ch. 2, L. 1983.

70-29-307. Security taken and investment made in name of clerk. When the security of the proceeds of sale is taken or when an investment of any such proceeds is made, it must be done, except as herein otherwise provided, in the name of the clerk of the court where the papers are filed and his successors in office, who must hold the same for the use and benefit of the persons interested, subject to the order of the court.

History: En. Sec. 529, p. 147, Bannack Stat.; re-en. Sec. 301, p. 195, L. 1867; re-en. Sec. 350, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1384, C. Civ. Proc. 1895; re-en. Sec. 6927, Rev. C. 1907; re-en. Sec. 9560, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 789; re-en. Sec. 9560, R.C.M. 1935; R.C.M. 1947, 93-6345.

70-29-308. Agreement of parties as to security. When security is taken by the referees on a sale and the parties interested in such security, by an instrument in writing under their hands delivered to the referees, agree upon the shares and proportions to which they are respectively entitled or when shares and proportions have been previously adjudged by the court, such securities must be taken in the names of and payable to the parties respectively entitled thereto and must be delivered to such parties upon their receipt therefor. Such agreement and receipt must be returned and filed with the clerk of the court.

History: En. Sec. 530, p. 147, Bannack Stat.; re-en. Sec. 302, p. 196, L. 1867; re-en. Sec. 351, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1385, C. Civ. Proc. 1895; re-en. Sec. 6928, Rev. C. 1907; re-en. Sec. 9561, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 790; re-en. Sec. 9561, R.C.M. 1935; R.C.M. 1947, 93-6346.

70-29-309. Referees' report of sale. (1) After completing a sale of the property or any part thereof ordered to be sold, the referees must report the same to the court with:

(a) a description of the different parcels of land sold to each purchaser;
(b) the price paid or secured;
(c) the terms and conditions of the sale; and
(d) the securities, if any, taken.

(2) The report must be filed in the office of the clerk of the court and a certified copy thereof in the office of the county clerk and recorder of the county where the property is situated.

History: En. Sec. 524, p. 146, Bannack Stat.; re-en. Sec. 296, p. 195, L. 1867; re-en. Sec. 345, p. 102, Cod. Stat. 1871; re-en. Sec. 396, p. 147, L. 1877; re-en. Sec. 396, 1st Div. Rev. Stat. 1879; re-en. Sec. 409, 1st Div. Comp. Stat. 1887; re-en. Sec. 1379, C. Civ. Proc. 1895; re-en. Sec. 6922, Rev. C. 1907; re-en. Sec. 9555, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 784; re-en. Sec. 9555, R.C.M. 1935; R.C.M. 1947, 93-6340.

70-29-310. Execution of conveyances and taking of security. If the sale be confirmed by the court, an order must be entered directing the referees to execute conveyances and take securities pursuant to such sale which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of sale.

History: En. Sec. 525, p. 146, Bannack Stat.; re-en. Sec. 297, p. 195, L. 1867; re-en. Sec. 346, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1380, C. Civ. Proc. 1895; re-en. Sec. 6923, Rev. C. 1907; re-en. Sec. 9556, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 785; re-en. Sec. 9556, R.C.M. 1935; R.C.M. 1947, 93-6341.

70-29-311. Conveyances to be recorded — bar against parties. The conveyances must be recorded in the county where the premises are situated and shall be a bar against all persons interested in the property in any way who shall have been named as parties in the action and against all such parties and persons as were unknown, if the summons was served by publication, and against all persons claiming under them or either of them and against all persons having unrecorded deeds or liens at the commencement of the action.

History: En. Sec. 527, p. 146, Bannack Stat.; re-en. Sec. 299, p. 195, L. 1867; re-en. Sec. 348, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1382, C. Civ. Proc. 1895; re-en. Sec. 6925, Rev. C. 1907; re-en. Sec. 9558, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 787; re-en. Sec. 9558, R.C.M. 1935; R.C.M. 1947, 93-6343.

70-29-312 through 70-29-320 reserved.

70-29-321. Priorities for application of proceeds. The proceeds of the sale of encumbered property must be applied under the direction of the court as follows:

(1) to pay its just proportion of the general costs of the action;
(2) to pay the costs of the reference;

(3) to satisfy and cancel of record the several liens in their order of priority by payment of the sums due and to become due, the amount due to be verified by affidavit at the time of payment;

(4) the residue among the owners of the property sold, according to their respective shares therein.

History: En. Sec. 511, p. 144, Bannack Stat.; re-en. Sec. 283, p. 193, L. 1867; re-en. Sec. 332, p. 100, Cod. Stat. 1871; re-en. Sec. 383, p. 145, L. 1877; re-en. Sec. 383, 1st Div. Rev. Stat. 1879; re-en. Sec. 396, 1st Div. Comp. Stat. 1887; re-en. Sec. 1366, C. Civ. Proc. 1895; re-en. Sec. 6909, Rev. C. 1907; re-en. Sec. 9542, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 771; re-en. Sec. 9542, R.C.M. 1935; R.C.M. 1947, 93-6327.

70-29-322. Other securities to be exhausted first. Whenever any party to an action who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale or may order a just deduction to be made from the amount of the lien on the property on account thereof.

History: En. Sec. 512, p. 144, Bannack Stat.; re-en. Sec. 284, p. 193, L. 1867; re-en. Sec. 333, p. 100, Cod. Stat. 1871; re-en. Sec. 384, p. 145, L. 1877; re-en. Sec. 384, 1st Div. Rev. Stat. 1879; re-en. Sec. 397, 1st Div. Comp. Stat. 1887; re-en. Sec. 1367, C. Civ. Proc. 1895; re-en. Sec. 6910, Rev. C. 1907; re-en. Sec. 9543, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 772; re-en. Sec. 9543, R.C.M. 1935; R.C.M. 1947, 93-6328.

70-29-323. Disposition of proceeds generally. The proceeds of sale and the securities taken by the referees or any part thereof must be distributed by them to the persons entitled thereto whenever the court so directs. But in case no direction be given, all of such proceeds and securities must be paid into the court or deposited therein or as directed by the court.

History: En. Sec. 513, p. 144, Bannack Stat.; re-en. Sec. 285, p. 194, L. 1867; re-en. Sec. 334, p. 101, Cod. Stat. 1871; re-en. Sec. 385, p. 145, L. 1877; re-en. Sec. 385, 1st Div. Rev. Stat. 1879; re-en. Sec. 398, 1st Div. Comp. Stat. 1887; re-en. Sec. 1368, C. Civ. Proc. 1895; re-en. Sec. 6911, Rev. C. 1907; re-en. Sec. 9544, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 773; re-en. Sec. 9544, R.C.M. 1935; R.C.M. 1947, 93-6329.

70-29-324. Continuation of action when proceeds paid into court. When the proceeds of the sale of any share or parcel belonging to persons who are parties to the action and who are known are paid into the court, the action may continue as between such parties for the determination of their respective claims thereto which must be ascertained and adjudged by the court. Further testimony may be taken in court or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy by pleadings, as in an original action.

History: En. Sec. 514, p. 144, Bannack Stat.; re-en. Sec. 286, p. 194, L. 1867; re-en. Sec. 335, p. 101, Cod. Stat. 1871; re-en. Sec. 386, p. 145, L. 1877; re-en. Sec. 386, 1st Div. Rev. Stat. 1879; re-en. Sec. 399, 1st Div. Comp. Stat. 1887; re-en. Sec. 1369, C. Civ. Proc. 1895; re-en. Sec. 6912, Rev. C. 1907; re-en. Sec. 9545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 774; re-en. Sec. 9545, R.C.M. 1935; R.C.M. 1947, 93-6330.

70-29-325. Future interests — ascertainment — share of proceeds. In all cases of sales when it appears that any person has a vested or contingent or future right or estate in any of the property sold, the court must ascertain and settle the proportional value of such contingent or vested right or estate and must direct such proportion of the proceeds of the sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

History: En. Sec. 521, p. 146, Bannack Stat.; re-en. Sec. 293, p. 195, L. 1867; re-en. Sec. 342, p. 102, Cod. Stat. 1871; re-en. Sec. 393, p. 147, L. 1877; re-en. Sec. 393, 1st Div. Rev. Stat. 1879; re-en. Sec. 406, 1st Div. Comp. Stat. 1887; re-en. Sec. 1376, C. Civ. Proc. 1895; re-en. Sec. 6919, Rev. C. 1907; re-en. Sec. 9552, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 781; re-en. Sec. 9552, R.C.M. 1935; R.C.M. 1947, 93-6337.

70-29-326. Tenant for life or years — compensation upon sale. (1) The person entitled to a tenancy for life or years or who has a right or inchoate right of dower, whose estate has been sold, is entitled to receive such sum as may be deemed a reasonable satisfaction for such estate and which the person so entitled may consent to accept instead thereof by an instrument in writing filed with the clerk of the court. Upon the filing of such consent, the clerk must enter the same in the minutes of the court.

(2) If such consent be not given, filed, and entered, as provided in subsection (1), at or before a judgment of sale is rendered, the court must ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be allowed on account of such estate and must order the same to be paid to such party or deposited in court for him or her, as the case may require.

(3) If the persons entitled to such estate for life or years be unknown, the court must provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

History: (1)En. Sec. 518, p. 145, Bannack Stat.; re-en. Sec. 290, p. 194, L. 1867; re-en. Sec. 339, p. 101, Cod. Stat. 1871; re-en. Sec. 390, p. 146, L. 1877; re-en. Sec. 390, 1st Div. Rev. Stat. 1879; re-en. Sec. 403, 1st Div. Comp. Stat. 1887; re-en. Sec. 1373, C. Civ. Proc. 1895; re-en. Sec. 6916, Rev. C. 1907; re-en. Sec. 9549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 778; re-en. Sec. 9549, R.C.M. 1935; Sec. 93-6334, R.C.M. 1947; (2)En. Sec. 519, p. 145, Bannack Stat.; re-en. Sec. 291, p. 195, L. 1867; re-en. Sec. 340, p. 102, Cod. Stat. 1871; re-en. Sec. 391, p. 146, L. 1877; re-en. Sec. 391, 1st Div. Rev. Stat. 1879; re-en. Sec. 404, 1st Div. Comp. Stat. 1887; re-en. Sec. 1374, C. Civ. Proc. 1895; re-en. Sec. 6917, Rev. C. 1907; re-en. Sec. 9550, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 779; re-en. Sec. 9550, R.C.M. 1935; Sec. 93-6335, R.C.M. 1947; (3)En. Sec. 520, p. 146, Bannack Stat.; re-en. Sec. 292, p. 195, L. 1867; re-en. Sec. 341, p. 102, Cod. Stat. 1871; re-en. Sec. 392, p. 147, L. 1877; re-en. Sec. 392, 1st Div. Rev. Stat. 1879; re-en. Sec. 405, 1st Div. Comp. Stat. 1887; re-en. Sec. 1375, C. Civ. Proc. 1895; re-en. Sec. 6918, Rev. C. 1907; re-en. Sec. 9551, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 780; re-en. Sec. 9551, R.C.M. 1935; Sec. 93-6336, R.C.M. 1947; R.C.M. 1947, 93-6334, 93-6335, 93-6336.

70-29-327. Minor's share of proceeds — payment to guardian. When the share of a minor is sold, the proceeds of the sale may be paid by the referee making the sale to his general guardian or the special guardian appointed for him in the action upon giving the security required by law or directed by order of the court.

History: En. Sec. 533, p. 148, Bannack Stat.; re-en. Sec. 305, p. 196, L. 1867; re-en. Sec. 354, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1388, C. Civ. Proc. 1895; re-en. Sec. 6931, Rev. C. 1907; re-en. Sec. 9564, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 793; re-en. Sec. 9564, R.C.M. 1935; R.C.M. 1947, 93-6349; amd. Sec. 10, Ch. 2, L. 1983.

Cross-References

Guardian ad litem, 25-5-301.

70-29-328. Incompetent's share of proceeds — payment to guardian. The guardian who may be entitled to the custody and management of the estate of a seriously mentally ill person or other person adjudged incapable of conducting his own affairs, whose interest in real property has been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing with sufficient sureties an undertaking, approved by a judge of the court, that he will faithfully discharge the trust reposed in him and will render a true and just account to the person entitled or to his legal representative.

History: En. Sec. 534, p. 148, Bannack Stat.; re-en. Sec. 306, p. 196, L. 1867; re-en. Sec. 355, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1389, C. Civ. Proc. 1895; re-en. Sec. 6932, Rev. C. 1907; re-en. Sec. 9565, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 794; re-en. Sec. 9565, R.C.M. 1935; R.C.M. 1947, 93-6350; amd. Sec. 25, Ch. 115, L. 1979.

Cross-References

Powers of attorney, Title 72, ch. 5, part 5.

Persons under disability, Title 72, ch. 13.

70-29-329. Proceeds of sale belonging to persons unknown or out-of-state — how invested. Where there are proceeds of a sale belonging to an unknown owner or to a person without the state who has no legal representative within it, the same must be invested in bonds of this state or the United States for the benefit of the persons entitled thereto.

History: En. Sec. 528, p. 146, Bannack Stat.; re-en. Sec. 300, p. 195, L. 1867; re-en. Sec. 349, p. 103, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1383, C. Civ. Proc. 1895; re-en. Sec. 6926, Rev. C. 1907; re-en. Sec. 9559, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 788; re-en. Sec. 9559, R.C.M. 1935; R.C.M. 1947, 93-6344.

70-29-330. Duty of clerk as to security and investments. The clerk of court in whose name a security is taken or by whom an investment is made and his successors in office must:

(1) receive the interest and principal as it becomes due and apply and invest the same as the court may direct;

(2) deposit with the county treasurer all securities taken; and

(3) keep an account of investments and moneys received by him thereon and the disposition thereof in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons.

History: En. Sec. 531, p. 147, Bannack Stat.; re-en. Sec. 303, p. 196, L. 1867; re-en. Sec. 352, p. 104, Cod. Stat. 1871; rep. Sec. 627, p. 215, L. 1877; en. Sec. 1386, C. Civ. Proc. 1895; re-en. Sec. 6929, Rev. C. 1907; re-en. Sec. 9562, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 791; re-en. Sec. 9562, R.C.M. 1935; R.C.M. 1947, 93-6347.

CHAPTER 30

EMINENT DOMAIN

Part 1 — General and Substantive Provisions

70-30-101. Eminent domain defined.
70-30-102. Public uses enumerated.
70-30-103. What private property may be taken.
70-30-104. What estates and rights in land may be taken.

70-30-105. Appropriation of underground gas reservoir — effect on owner's right to drill.
70-30-106. Eminent domain not to be used for coal mining in certain cases — policy.
70-30-107. Private roads.
70-30-108. No abrogation of provisions relating to city or county roads.
70-30-109. Temporary logging roads and banking grounds.
70-30-110. Survey and location of property to be taken — greatest public good — least private injury.
70-30-111. Facts necessary to be found before condemnation.

Part 2 — Preliminary Procedure

70-30-201. Applicable rules of practice.
70-30-202. Jurisdiction and venue — complaint and summons required.
70-30-203. Contents of complaint.
70-30-204. Repealed.
70-30-205. Repealed.
70-30-206. Powers of court — preliminary condemnation order.
70-30-207. Appointment of commissioners — affidavit — compensation.

Part 3 — Hearing, Judgment, and Subsequent Proceedings

70-30-301. Hearing — judge to preside — determinations by commissioners.
70-30-302. Assessing compensation — date and measure — interest.
70-30-303. Final report and award of commissioners — procedure on failure to agree.
70-30-304. Appeal to district court from assessment of commissioners.
70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation.
70-30-306. Necessary expenses of litigation defined.
70-30-307. When payment of compensation to be made — deposit of bond.
70-30-308. How payment made — execution or annulment for nonpayment.
70-30-309. Final order of condemnation — contents — vesting upon filing.
70-30-310. New proceedings to cure defective title.
70-30-311. Putting plaintiff in possession.
70-30-312. Appeal to supreme court.
70-30-313. Current fair market value.
70-30-314. Weed control responsibility.
70-30-315. Proration of taxes.
70-30-316 through 70-30-320 reserved.
70-30-321. Sale of property acquired for public use when use abandoned — procedure.
70-30-322. Option of original owner or successor in interest to purchase at sale price.

Chapter Cross-References

Eminent domain, Art. II, sec. 29, Mont. Const.

Local government subject to Title 70, ch. 30, 7-1-114.

City or Town Council — power of eminent domain, 7-5-4106.

County Commissioners — right-of-way, 7-14-2107.

Public ferries and wharves, 7-14-2804, 7-14-2829.

Municipal housing authority, 7-15-4462.

Cemetery association's power of eminent domain, 35-20-104.

Department of Transportation — exercise of right of eminent domain, 60-4-104.

State airports, 67-2-301, 67-2-302.

Municipal airports, 67-6-301, 67-10-102.

Connection of telegraph and telephone lines — compensation to be paid, 69-6-101.

Pipeline carriers, 69-13-104.

Connections between lines of different railroads, 69-14-539.

Power of eminent domain — railroads, 69-14-552.

Eminent domain — authorized, 70-1-205.

Mining — right-of-way and eminent domain, Title 82, ch. 2, part 2.

Eminent domain for open-pit mining — purchase of property required, 82-2-221.

Eminent domain — underground storage of natural gas, Title 82, ch. 10, part 3.

Part 1

General and Substantive Provisions

70-30-101. Eminent domain defined. Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this chapter.

History: En. Sec. 579, p. 189, L. 1877; re-en. Sec. 579, 1st Div. Rev. Stat. 1879; re-en. Sec. 597, 1st Div. Comp. Stat. 1887; amd. Sec. 2210, C. Civ. Proc. 1895; re-en. Sec. 7330, Rev. C. 1907; re-en. Sec. 9933, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1237; re-en. Sec. 9933, R.C.M. 1935; R.C.M. 1947, 93-9901.

70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) all public uses authorized by the government of the United States;

(2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;

(3) public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys and all other public uses for the benefit of any county, city, or town or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized;

(4) wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, mills, and smelters for the reduction of ores and farming neighborhoods with water and drainage and reclaiming lands and for floating logs and lumber on streams not navigable and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(5) roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, mills, or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines, mills, and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for reservoirs necessary for collecting and storing water. However, such reservoir sites must possess a public use demonstrable to the district court as the highest and best use of the land.

(6) private roads leading from highways to residences or farms;

(7) telephone or electric light lines;

(8) telegraph lines;

(9) sewerage of any city, county, or town or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than 10 families or of any public buildings belonging to the state or to any college or university;

(10) tramway lines;

(11) electric power lines;

(12) logging railways;

(13) temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads, or highways for such time as the court or judge may determine; provided, the grounds of state institutions be excepted;

(14) underground reservoirs suitable for storage of natural gas;

(15) to mine and extract ores, metals, or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others. However, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may not be exercised for this purpose;

(16) to restore and reclaim lands strip- or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or underground mining on those lands.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Comp. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1238; re-en. Sec. 9934, R.C.M. 1935; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973; amd. Sec. 1, Ch. 375, L. 1974; R.C.M. 1947, 93-9902; amd. Sec. 18, Ch. 550, L. 1979.

Cross-References

City or Town Council — water supply and regulation, Title 7, ch. 13, part 44.

Acquisition of land for ferry, 7-14-2829.

Municipal housing authority — exercise of power of eminent domain, 7-15-4462.

Municipal airports, Title 67, ch. 10.

Property for waterworks — public use, 85-1-209.

Conduction of water as public use, 85-2-414.

Use of water for irrigation as public use, 85-7-1931.

70-30-103. What private property may be taken. (1) The private property which may be taken under this chapter includes:

(a) all real property belonging to any person;

(b) lands belonging to this state or to any county, city, or town not appropriated to some public use;

(c) property appropriated to public use, but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated;

(d) franchises for roads, bridges, and ferries and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use;

(e) all rights-of-way for any and all the purposes mentioned in 70-30-102 and any and all structures and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right-of-way of improvements or structures thereon. They must also be subject to a limited use in common with the owner thereof when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(2) All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

History: En. Sec. 582, p. 190, L. 1877; re-en. Sec. 582, 1st Div. Rev. Stat. 1879; re-en. Sec. 600, 1st Div. Comp. Stat. 1887; amd. Sec. 2213, C. Civ. Proc. 1895; re-en. Sec. 7333, Rev. C. 1907; re-en. Sec. 9936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1240; re-en. Sec. 9936, R.C.M. 1935; R.C.M. 1947, 93-9904.

70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or other interest, for so long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

History: En. Sec. 581, p. 190, L. 1877; re-en. Sec. 581, 1st Div. Rev. Stat. 1879; re-en. Sec. 599, 1st Div. Comp. Stat. 1887; re-en. Sec. 2212, C. Civ. Proc. 1895; re-en. Sec. 7332, Rev. C. 1907; re-en. Sec. 9935, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1239; re-en. Sec. 9935, R.C.M. 1935; amd. Sec. 1, Ch. 158, L. 1943; amd. Sec. 2, Ch. 245, L. 1953; amd. Sec. 7, Ch. 259, L. 1955; amd. Sec. 2, Ch. 216, L. 1961; R.C.M. 1947, 93-9903; amd. Sec. 1, Ch. 97, L. 1979; amd. Sec. 1, Ch. 622, L. 1983.

70-30-105. Appropriation of underground gas reservoir — effect on owner's right to drill. (1) The appropriation of any sand, stratum, or formation for use as an underground natural gas storage reservoir shall be without prejudice to the rights of the owner or owners of said lands or of the oil, gas, or other mineral rights therein to drill or bore through the sand, stratum, or formation so appropriated for use as an underground natural gas storage reservoir in order to explore for, produce, process, treat, or market any oil, gas, or other minerals that might be contained in said lands above or below the sand, stratum, or formation so appropriated.

(2) Any additional cost or expense required to be incurred in order to protect the underground gas storage reservoir against pollution and the escape of the gas therefrom by reason of such boring or drilling through of the sand, stratum, or formation used as such underground gas storage reservoir shall be paid by the persons, firm, or corporation then owning such underground gas storage reservoir.

History: En. Sec. 5, Ch. 245, L. 1953; R.C.M. 1947, 93-9903.1.

70-30-106. Eminent domain not to be used for coal mining in certain cases — policy. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

(2) In many areas of Montana set forth in (1) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines and is also contrary to public policy as set forth in subsection (4).

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

(4) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973; R.C.M. 1947, 93-9902.1.

70-30-107. Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

History: En. Sec. 2232, C. Civ. Proc. 1895; re-en. Sec. 7352, Rev. C. 1907; re-en. Sec. 9955, R.C.M. 1921; re-en. Sec. 9955, R.C.M. 1935; R.C.M. 1947, 93-9923.

70-30-108. No abrogation of provisions relating to city or county roads. Nothing in this code must be construed to abrogate or repeal any statute providing for the taking of property in any city, town, or county for road or street purposes.

History: En. Sec. 2233, C. Civ. Proc. 1895; re-en. Sec. 7353, Rev. C. 1907; re-en. Sec. 9956, R.C.M. 1921; re-en. Sec. 9956, R.C.M. 1935; R.C.M. 1947, 93-9924.

70-30-109. Temporary logging roads and banking grounds. (1) In the event that temporary roads for logging purposes or grounds for banking purposes are opened or taken, the same shall include only the temporary right to use the same, and the order of condemnation for said road shall fix the length of time and the date from which such road shall be opened or land shall be used, and at the expiration of said period so fixed, the right to use said road or land shall cease, and the use of said land shall revert to the party from whom the same is taken or to his legal successor in interest; provided, that no lands or grounds shall be taken for such temporary logging roads or banking grounds for a period of time longer than 5 years, and when taken for a period of time exceeding 1 year, the amount of damage for such year shall be fixed separately, and the amount fixed for each particular year must be paid on or before January 1 of each year; and in the event that the amount so fixed for any one year is not paid as herein specified, then and in that event the use of such lands shall revert to the party from whom the same is taken or to his successor in interest.

(2) In any suit for the opening of any temporary logging road or for the use of any ground or land for banking purposes, the court shall not finally order the opening of such road or the right to use such land or ground until the amount assessed as damages has been paid into court for the benefit of the party or parties owning or holding such land.

(3) In the event that any such land is occupied by a lessee, such lessee shall be made a party to the suit, and the final decree of the court shall apportion the amount of compensation received between the lessee and the owner of such lands, such decree being subject to the right of appeal of any party in interest.

History: En. Sec. 1, Ch. 89, L. 1907; re-en. Secs. 7354, 7355, Rev. C. 1907; re-en. Secs. 9957, 9958, R.C.M. 1921; re-en. Secs. 9957, 9958, R.C.M. 1935; R.C.M. 1947, 93-9925, 93-9926.

70-30-110. Survey and location of property to be taken — greatest public good — least private injury. In all cases where land is required for public use, the state or its agents in charge of such use may survey and locate the same, but it must be located in the manner which will be most compatible with the greatest public good and the least private injury and subject to the provisions of 70-30-206. The state or its agents in charge of such public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land except from injuries resulting from negligence, wantonness, or malice. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of his land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of such information furnish written notice to such persons.

History: En. Sec. 584, p. 191, L. 1877; re-en. Sec. 584, 1st Div. Rev. Stat. 1879; re-en. Sec. 602, 1st Div. Comp. Stat. 1887; re-en. Sec. 2215, C. Civ. Proc. 1895; re-en. Sec. 7335,

Rev. C. 1907; re-en. Sec. 9938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1242; re-en. Sec. 9938, R.C.M. 1935; R.C.M. 1947, 93-9906; amd. Sec. 1, Ch. 666, L. 1985.

70-30-111. Facts necessary to be found before condemnation. Before property can be taken, the plaintiff must show by a preponderance of the evidence that the public interest requires the taking based on the following findings:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

(4) that an effort to obtain the interest sought to be condemned was made by submission of a written offer and that such offer was rejected.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part); amd. Sec. 2, Ch. 622, L. 1983.

Part 2

Preliminary Procedure

70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence, are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

History: En. Sec. 2231, C. Civ. Proc. 1895; re-en. Sec. 7351, Rev. C. 1907; re-en. Sec. 9954, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1256; re-en. Sec. 9954, R.C.M. 1935; R.C.M. 1947, 93-9922; amd. Sec. 26, Ch. 115, L. 1979; amd. Sec. 3, Ch. 622, L. 1983.

Cross-References

Rules incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

70-30-202. Jurisdiction and venue — complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this chapter must contain a notice to the defendant to file and serve an answer. Within 6 months from the date the summons is served, unless the court shortens or enlarges that time for good cause, the court, sitting without a jury, shall commence its trial on the issue of whether a preliminary condemnation order should be issued.

History: En. Sec. 585, p. 191, L. 1877; re-en. Sec. 585, 1st Div. Rev. Stat. 1879; re-en. Sec. 603, 1st Div. Comp. Stat. 1887; re-en. Sec. 2216, C. Civ. Proc. 1895; re-en. Sec. 7336, Rev. C. 1907; re-en. Sec. 9939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1243; re-en. Sec. 9939,

R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1937; R.C.M. 1947, 93-9907; amd. Sec. 4, Ch. 622, L. 1983.

70-30-203. Contents of complaint. The complaint must allege:

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

(5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

(6) a description of each interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract and a statement that the interest sought is the minimum necessary interest. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties.

(7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304.

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1244; re-en. Sec. 9940, R.C.M. 1935; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973; amd. Sec. 206, Ch. 253, L. 1974; R.C.M. 1947, 93-9908; amd. Sec. 20, Ch. 526, L. 1983; amd. Sec. 5, Ch. 622, L. 1983; amd. Sec. 2, Ch. 666, L. 1985.

70-30-204. Repealed. Sec. 12, Ch. 622, L. 1983.

History: En. Sec. 587, p. 192, L. 1877; re-en. Sec. 587, 1st Div. Rev. Stat. 1879; re-en. Sec. 605, 1st Div. Comp. Stat. 1887; amd. Sec. 2218, C. Civ. Proc. 1895; re-en. Sec. 7338, Rev. C. 1907; re-en. Sec. 9941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1245; re-en. Sec. 9941, R.C.M. 1935; amd. Sec. 9, Ch. 259, L. 1955; amd. Sec. 1, Ch. 234, L. 1961; R.C.M. 1947, 93-9909.

70-30-205. Repealed. Sec. 12, Ch. 622, L. 1983.

History: En. Sec. 588, p. 192, L. 1877; re-en. Sec. 588, 1st Div. Rev. Stat. 1879; re-en. Sec. 606, 1st Div. Comp. Stat. 1887; amd. Sec. 2219, C. Civ. Proc. 1895; re-en. Sec. 7339, Rev. C. 1907; re-en. Sec. 9942, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1246; re-en. Sec. 9942, R.C.M. 1935; amd. Sec. 2, Ch. 234, L. 1961; R.C.M. 1947, 93-9910.

70-30-206. Powers of court — preliminary condemnation order. (1) The court has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States; or

(b) limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary.

(2) If the court finds and concludes from the evidence presented that the public interest requires the taking of such interest in real property and that the plaintiff has met his burden of proof under 70-30-111, it must forthwith make and enter a preliminary condemnation order that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff.

(4) After a complaint as described in 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party's position, with all aspects of the preliminary condemnation proceeding including discovery and trial. The court shall give such proceedings expeditious and priority consideration. The preliminary condemnation proceeding shall be tried by the court sitting without a jury.

History: En. Sec. 589, p. 193, L. 1877; re-en. Sec. 589, 1st Div. Rev. Stat. 1879; re-en. Sec. 607, 1st Div. Comp. Stat. 1887; amd. Sec. 2220, C. Civ. Proc. 1895; re-en. Sec. 7340,

Rev. C. 1907; re-en. Sec. 9943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1247; re-en. Sec. 9943, R.C.M. 1935; amd. Sec. 4, Ch. 245, L. 1953; amd. Sec. 10, Ch. 259, L. 1955; amd. Sec. 3, Ch. 234, L. 1961; amd. Sec. 207, Ch. 253, L. 1974; R.C.M. 1947, 93-9911; amd. Sec. 6, Ch. 622, L. 1983.

70-30-207. Appointment of commissioners — affidavit — compensation. (1) Within 30 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners.

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

(a) that he is possessed of sufficient knowledge of the English language;

(b) that he is a resident of a county within the judicial district in which the action is pending;

(c) that he is not related within the sixth degree to any party; and

(d) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

(5) The court shall specify the compensation of the condemnation commissioners, which may not exceed $250 a hearing day, including expenses. The condemning party shall pay the compensation of the commissioners nominated.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 8, L. 1979; amd. Sec. 1, Ch. 122, L. 1983; amd. Sec. 7, Ch. 622, L. 1983; amd. Sec. 3, Ch. 666, L. 1985.

Part 3

Hearing, Judgment, and Subsequent Proceedings

70-30-301. Hearing — judge to preside — determinations by commissioners. (1) Immediately upon nomination and appointment of commissioners under 70-30-207, the same shall proceed to meet at the time and place stated in the order appointing them, which time shall not be more than 10 days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said 10-day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land.

(2) Such hearing shall be attended by and presided over by the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence.

(3) At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the following:

(a) the current fair market value of the property sought to be appropriated and all improvements thereon pertaining to the realty and of each and every separate estate and interest therein. If it consists of different parcels, the current fair market value of each parcel and each estate or interest therein must be separately assessed.

(b) if the property sought to be appropriated constitutes only a part of a larger parcel, the depreciation in current fair market value which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff;

(c) separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and if the benefit shall be equal to the amount assessed under subsection (3)(b), the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the amount assessed under subsection (3)(b), the former shall be deducted from the latter, and the remainder shall be the only amount allowed in addition to the current fair market value;

(d) if the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad and the cost of cattle guards where fences may cross the line of such railroad.

(4) Where there are two or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the amount of the award for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein. Thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

History: **En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1248; re-en. Sec. 9944, R.C.M. 1935; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971; R.C.M. 1947, 93-9912(part); amd. Sec. 1, Ch. 531, L. 1981.**

70-30-302. Assessing compensation — date and measure — interest. (1) For the purpose of assessing compensation, the right thereto shall be deemed to have accrued at the date of the service of the summons, and its current fair market value as of that date shall be the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected. This shall not be construed to limit the amount of compensation payable by the department of transportation under the provisions of any legislation enacted pursuant to the federal Highway Beautification Act of 1965.

(2) If an order be made letting the plaintiff into possession, as provided in 70-30-311, the full amount finally awarded shall draw interest at the rate of 10% per annum from the date of the service of the summons to the earlier of the following dates:

(a) the date on which the right to appeal to the Montana supreme court expires or, if appeal is filed, to the date of final decision by the supreme court; or

(b) the date on which the property owner withdraws from court the full amount finally awarded.

(3) If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (2)(a) and (2)(b) of this section until the full amount is withdrawn from the court.

(4) None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires.

(5) No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or depreciation in current fair market value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: **En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1249; re-en. Sec. 9945, R.C.M. 1935; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1867; amd. Sec. 12, Ch. 212, L. 1969; amd. Sec. 208, Ch. 316, L. 1974; amd. Sec. 1, Ch. 534, L. 1975; R.C.M. 1947, 93-9913; amd. Sec. 1, Ch. 257, L. 1981; amd. Sec. 2, Ch. 531, L. 1981; amd. Sec. 3, Ch. 512, L. 1991.**

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

70-30-303. Final report and award of commissioners — procedure on failure to agree. (1) The report of commissioners shall be made on such forms as are provided for their use by authority of the court. The report must be filed within 10 days after the completion of the hearing or within such additional time as allowed by the judge upon a clear showing of necessity and must be filed with the clerk of court. The clerk shall notify the parties interested that the report has been filed, which notice, together with a true copy of the report, must be served upon all the parties interested in the same manner as a summons.

(2) A concurrence of two commissioners is necessary to the making of a final report or award as to any parcel of property or interest therein. If no two of the commissioners are able to agree as to the amount of any award, they shall report the fact to the judge or court within the time herein specified and the court shall forthwith impanel and appoint new commissioners as herein provided, which commissioners shall proceed as provided herein to determine any award upon which the previous commissioners failed to agree.

(3) The report of the commissioners shall also state the number of days or portions thereof consumed by the commissioners in performance of their duties as prescribed herein.

History: En. Sec. 2223, C. Civ. Proc. 1895; re-en. Sec. 7343, Rev. C. 1907; re-en. Sec. 9946, R.C.M. 1921; re-en. Sec. 9946, R.C.M. 1935; amd. Sec. 6, Ch. 234, L. 1961; R.C.M. 1947, 93-9914; amd. Sec. 27, Ch. 115, L. 1979.

70-30-304. Appeal to district court from assessment of commissioners. (1) An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed by any party interested. Such appeal must be taken within the period of 30 days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the opposing party or his attorney in such proceedings and the filing of the same in the district court wherein the action is pending, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the amount to which appellant may be entitled, by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such amount by commissioners.

(2) Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain the highway, railroad, or other public work or improvement and to take, use, and appropriate the property described in such verdict or assessment for the use and purposes for which said land has been condemned shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors, or assigns forever.

(3) In case the party appealing from the award of the commissioners in any proceeding, as aforesaid, shall not succeed in changing to his advantage the amount finally awarded in such proceeding, he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant; provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such highway or railroad, seeking to condemn its right-of-way under and pursuant to the provisions of this chapter, provided such condemnation proceedings are begun within 1 year after such preliminary survey.

History: En. Sec. 608, p. 220, L. 1887; re-en. Sec. 2224, C. Civ. Proc. 1895; re-en. Sec. 7344, Rev. C. 1907; re-en. Sec. 9947, R.C.M. 1921; amd. Sec. 1, Ch. 145, L. 1927; re-en. Sec. 9947, R.C.M. 1935; amd. Sec. 7, Ch. 234, L. 1961; R.C.M. 1947, 93-9915.

70-30-305. Condemnor to make offer upon appeal — award of expenses of litigation. (1) The condemnor shall, within 30 days after an appeal is perfected from the commissioner's award or report or not more than 60 days after waiver of appointment of condemnation commissioners, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued. If at any time prior to 10 days before trial the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(2) In the event of litigation and when the private property owner prevails by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

History: En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973; R.C.M. 1947, 93-9921.1; amd. Sec. 2, Ch. 8, L. 1979.

70-30-306. Necessary expenses of litigation defined. (1) Necessary expenses of litigation as authorized by 70-30-305 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which trial is held. Reasonable and necessary attorney fees shall be computed on an hourly basis and may not be computed on the basis of any contingent fee contract entered into after July 1, 1977.

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of such expertise in the county in which trial is held.

History: En. 93-9921.2 by Sec. 1, Ch. 48, L. 1977; R.C.M. 1947, 93-9921.2.

70-30-307. When payment of compensation to be made — deposit of bond. The plaintiff must within 30 days after final judgment pay the sum of money assessed but may at the time of or before the payment elect to build the fences and cattle guards and, if he so elect, shall execute to the defendant a bond with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within 8 months from the time the railroad is built on the land taken and, if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond, the plaintiff may recover reasonable attorney's fees.

History: En. Sec. 593, p. 194, L. 1877; re-en. Sec. 593, 1st Div. Rev. Stat. 1879; re-en. Sec. 611, 1st Div. Comp. Stat. 1887; amd. Sec. 2226, C. Civ. Proc. 1895; re-en. Sec. 7346, Rev. C. 1907; re-en. Sec. 9949, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1251; re-en. Sec. 9949, R.C.M. 1935; R.C.M. 1947, 93-9917.

70-30-308. How payment made — execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned.

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff.

History: En. Sec. 594, p. 194, L. 1877; re-en. Sec. 594, 1st Div. Rev. Stat. 1879; re-en. Sec. 612, 1st Div. Comp. Stat. 1887; re-en. Sec. 2227, C. Civ. Proc. 1895; re-en. Sec. 7347, Rev. C. 1907; re-en. Sec. 9950, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1252; re-en. Sec. 9950, R.C.M. 1935; R.C.M. 1947, 93-9918; amd. Sec. 3, Ch. 531, L. 1981; amd. Sec. 8, Ch. 622, L. 1983.

70-30-309. Final order of condemnation — contents — vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

History: En. Sec. 595, p. 195, L. 1877; re-en. Sec. 595, 1st Div. Rev. Stat. 1879; re-en. Sec. 613, 1st Div. Comp. Stat. 1887; re-en. Sec. 2228, C. Civ. Proc. 1895; re-en. Sec. 7348, Rev. C. 1907; re-en. Sec. 9951, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1253; re-en. Sec. 9951, R.C.M. 1935; R.C.M. 1947, 93-9919; amd. Sec. 9, Ch. 622, L. 1983.

70-30-310. New proceedings to cure defective title. If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

History: En. Sec. 592, p. 194, L. 1877; re-en. Sec. 592, 1st Div. Rev. Stat. 1879; re-en. Sec. 610, 1st Div. Comp. Stat. 1887; re-en. Sec. 2225, C. Civ. Proc. 1895; re-en. Sec. 7345, Rev. C. 1907; re-en. Sec. 9948, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1250; re-en. Sec. 9948, R.C.M. 1935; R.C.M. 1947, 93-9916.

70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his statement of claim of just compensation under 70-30-207 or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and proceedings against the plaintiff on account thereof be stayed until such time.

(2) If the defendant fails to file a statement of claim of just compensation within the time specified in 70-30-207, the plaintiff may obtain an order for possession provided for in subsection (1), subject to the condition subsequent that a plaintiff's payment into court shall be made within 10 days of receipt of the defendant's statement of claim.

(3) However, where an appeal is taken by such defendant, the court may, in its discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the court and to be in such sum as the court may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(4) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so

received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

History: En. Sec. 596, p. 195, L. 1877; re-en. Sec. 596, 1st Div. Rev. Stat. 1879; amd. Sec. 614, 1st Div. Comp. Stat. 1887; amd. Sec. 2, p. 272, L. 1891; en. Sec. 2229, C. Civ. Proc. 1895; re-en. Sec. 7349, Rev. C. 1907; re-en. Sec. 9952, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1254; re-en. Sec. 9952, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1961; R.C.M. 1947, 93-9920; amd. Sec. 10, Ch. 622, L. 1983.

70-30-312. Appeal to supreme court. (1) The plaintiff or defendant or any party interested in the proceedings can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases.

(2) Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1241; re-en. Sec. 9937, R.C.M. 1935; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966; R.C.M. 1947, 93-9905(part).

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) the highest and best reasonably available use and its value for such use, provided current use may not be presumed to be the highest and best use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered.

History: En. Sec. 4, Ch. 531, L. 1981; amd. Sec. 11, Ch. 622, L. 1983.

70-30-314. Weed control responsibility. The plaintiff, upon taking possession of the land, is responsible for the control and destruction of noxious weeds on such land until natural grasses have taken over the property and noxious weeds have ceased to exist.

History: En. Sec. 5, Ch. 531, L. 1981.

Cross-References

Weed control, Title 80, ch. 7, part 7.

70-30-315. Proration of taxes. The plaintiff shall be assessed his pro rata share of taxes for the land being condemned as of the date of possession or summons, whichever occurs first. The plaintiff shall be assessed for all taxes accruing after the date of possession or summons, whichever occurs first.

History: En. Sec. 6, Ch. 531, L. 1981.

70-30-316 through 70-30-320 reserved.

70-30-321. Sale of property acquired for public use when use abandoned — procedure. (1) Except as provided in subsection (3), whenever a person who has acquired a real property interest for a public use, whether by right of eminent domain or otherwise, abandons such public use and places such interest for sale, the seller may sell the interest to the highest bidder at public auction.

(2) In the event the seller decides to sell an interest in real property as set forth in subsection (1), he shall publish notice of the public sale in a newspaper published in the county in which the real property interest is located once a week for 4 successive weeks. Sale shall be held in the county where the real property interest is located. The notice of sale shall contain the information required by 77-2-322.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest.

History: En. Sec. 1, Ch. 440, L. 1981; amd. Sec. 1, Ch. 689, L. 1983.

70-30-322. Option of original owner or successor in interest to purchase at sale price. (1) Except as provided in subsection (3), the owner from whom the real property interest was originally acquired by eminent domain or otherwise or, if there is a successor in interest, the owner or his successor in interest shall be notified by the seller by certified mail and shall have a 30-day option from the date of a sale provided for in 70-30-321 to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. If more than one person claims an equal entitlement, the option may not be exercised.

(2) If no bids are received by the seller and the optionholder indicates in writing to the seller that he wishes to exercise the option, the seller shall have the real property interest appraised and sell the interest at that price to the optionholder.

(3) When an interest other than a fee simple interest in property, which has been acquired for a public purpose by right of eminent domain, or otherwise, is abandoned or the purpose for which it was acquired is terminated, the property reverts to the original owner or his successor in interest.

History: En. Sec. 2, Ch. 440, L. 1981; amd. Sec. 2, Ch. 689, L. 1983; amd. Sec. 4, Ch. 666, L. 1985.

CHAPTER 31

RELOCATION ASSISTANCE FAIR TREATMENT OF CONDEMNEES

Part 1 — General Provisions

70-31-101. Purpose.
70-31-102. Definitions.
70-31-103. Application to all federally assisted programs.
70-31-104. New rights and powers not created.
70-31-105. Duplication of eminent domain payments not intended.
70-31-106. Payments not income under tax laws or other assistance laws.
70-31-107 through 70-31-110 reserved.
70-31-111. Rulemaking authority.

Part 2 — Relocation Payments, Assistance, and Advisory Services (Repealed. Sec. 6, Ch. 374, L. 1989)

Part 3 — Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated.
70-31-302. Reimbursement of closing costs and taxes incurred by owner.
70-31-303. Inverse condemnation — reimbursement of expenses of proceeding.
70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned.
70-31-305. Acquisition of buildings and improvements affected.
70-31-306 through 70-31-310 reserved.
70-31-311. Relocation payments and assistance.

Part 1

General Provisions

70-31-101. Purpose. It is the purpose of this chapter to:

(1) provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs;

(2) establish uniform and equitable land acquisition policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9927; amd. Sec. 1, Ch. 374, L. 1989.

70-31-102. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means any department, agency, or instrumentality of the state of Montana or of a political subdivision of the state, any department, agency, or instrumentality of two or more states or two or more political subdivisions of the state or of two or more states, and any person who has the authority to acquire property by eminent domain under state law.

(2) "Appraisal" means a written statement, independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date and supported by the presentation and analysis of relevant market information.

(3) "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and state income taxes, during the 2 taxable years immediately preceding the taxable year in which the business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during any other period that the acquiring agency determines to be more equitable for establishing earnings and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during the period.

(4) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of paying moving or related expenses, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

(5) "Displaced person" means:

(a) any person who moves from real property or moves his personal property from real property:

(i) as a direct result of a written notice of intent to acquire or by the acquisition of the real property, in whole or in part, for a program or project undertaken by a displacing agency for which federal financial assistance will be available to pay all or any part of the cost; or

(ii) on which he is a residential tenant or conducts a small business, farm operation, or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and for which federal financial assistance will be available to pay all or any part of the cost;

(b) any person who, for purposes of providing moving and related expenses or relocation advisory services only, moves from real property or moves his personal property from real property as a direct result of:

(i) a written notice of intent to acquire or as a direct result of the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(ii) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent.

(c) The term "displaced person" does not include a person who:

(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or

(ii) occupies property owned by the agency on a short-term rental basis or for a period subject to termination when the property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.

(6) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

(8) "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

(9) "Person" means any individual, partnership, corporation, or association.

History: En. Sec. 2, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9928; amd. Sec. 2, Ch. 374, L. 1989.

70-31-103. Application to all federally assisted programs. This chapter shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: En. Sec. 18, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9944.

70-31-104. New rights and powers not created. (1) Nothing in this chapter shall be construed as creating, in any condemnation proceedings brought under the power of eminent domain, any element of value or damage not in existence immediately prior to July 1, 1971.

(2) Nothing in this chapter shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: En. Sec. 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9943(2), (3).

70-31-105. Duplication of eminent domain payments not intended. No payment or assistance provided for in this chapter shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this chapter.

History: **En. Sec. 16, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9942.**

70-31-106. Payments not income under tax laws or other assistance laws. No payment received by a displaced person under this chapter shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: **En. Sec. 9, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9935.**

70-31-107 through 70-31-110 reserved.

70-31-111. Rulemaking authority. An agency, as defined in 2-3-102, is authorized to adopt necessary rules to implement this chapter.

History: **En. Sec. 4, Ch. 374, L. 1989.**

Part 2

Relocation Payments, Assistance, and Advisory Services
(Repealed. Sec. 6, Ch. 374, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

70-31-201. En. Sec. 3, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9929.

70-31-202. En. Sec. 4, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9930.

70-31-203. En. Sec. 5, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9931.

70-31-204. En. Sec. 6, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9932.

70-31-205. En. Secs. 7, 17, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9933, 93-9943(1).

70-31-206. En. Sec. 8, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9934.

70-31-207. En. Sec. 10, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9936.

Part 3

Rights and Duties Relating to Condemnation

70-31-301. Appraisal, negotiation, and other condemnation policies mandated. An agency which acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of such program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property. The head

of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of and summary of the basis for the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant shall be made.

(10) A person whose real property is being acquired may, after being fully informed of his right to receive just compensation, donate to an agency the

property, any interest in the property, or any compensation received for the property.

History: En. Sec. 11, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9937; amd. Sec. 5, Ch. 374, L. 1989.

70-31-302. Reimbursement of closing costs and taxes incurred by owner. Any agency acquiring real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner to the extent the acquiring agency deems fair and reasonable for:

(1) expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency;

(2) penalty costs for prepayment for any preexisting recorded mortgage or deed of trust entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

History: En. Sec. 12, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9938.

70-31-303. Inverse condemnation — reimbursement of expenses of proceeding. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project), the court rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property or attorney for the acquiring agency effecting a settlement of any such proceeding shall determine and award or allow to such plaintiff as a part of such judgment or settlement such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees actually incurred because of such proceeding.

History: En. Sec. 14, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9940.

70-31-304. Reimbursement of costs when condemnation proceedings dismissed or abandoned. Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project (for which federal financial assistance is available) and the final judgment is that the real property cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

History: **En. Sec. 13, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9939.**

70-31-305. Acquisition of buildings and improvements affected. (1) Where any interest in real property is acquired for a program or project (for which federal assistance will be available to pay all or any part of the cost of the program or project), the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term; and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(3) Payment for such buildings, structures, or improvements as set forth in subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection or subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

History: **En. Sec. 15, Ch. 3, 2nd Ex. L. 1971; R.C.M. 1947, 93-9941.**

70-31-306 through 70-31-310 reserved.

70-31-311. Relocation payments and assistance. For any project that results in the displacement of a person from his home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under state law is authorized to provide relocation assistance and to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration as may be required by federal law or rules to carry out the operation of relocation assistance.

History: **En. Sec. 3, Ch. 374, L. 1989.**

CHAPTER 32

HOMESTEADS

Part 1 — Establishment of the Homestead

70-32-101. Of what homestead consists.
70-32-102. Repealed.
70-32-103. From whose property homestead may be selected.
70-32-104. Limitation on value.
70-32-105. Mode of selection — declaration required.
70-32-106. Contents of declaration.
70-32-107. Declaration to be recorded.

Part 2 — Homestead Exemption—Execution

70-32-201. Homestead exempt from execution generally.
70-32-202. Execution allowed under certain judgments.
70-32-203. Execution under judgments not enumerated — application required.
70-32-204. Application for appraisal — contents — filing.
70-32-205. Service of petition — notice of hearing.
70-32-206. Appointment of appraisers — oath.
70-32-207. Duty of appraisers.
70-32-208. Report of appraisers — contents.
70-32-209. Order dividing land — execution against remainder over exemption.
70-32-210. Sale when land cannot be divided.
70-32-211. Amount of bid.
70-32-212. Application of proceeds of sale.
70-32-213. Sale proceeds equal to exemption protected.
70-32-214. Compensation of appraisers.
70-32-215. Costs.
70-32-216. Tracing homestead proceeds.
70-32-217 through 70-32-220 reserved.
70-32-221. Homestead subject to execution for certain judgments — separate acknowledgment required.

Part 3 — Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument.
70-32-302. How abandoned — declaration.
70-32-303. When declaration effective.

Chapter Cross-References

Exemption laws, Art. XIII, sec. 5, Mont. Const.

Residential property tax credit for elderly, 15-30-171 through 15-30-179.

Homestead exempt from execution, 25-13-615.

Exempt property — bankruptcy proceeding, 31-2-106.

Uniform Probate Code — homestead allowance, 72-2-801.

Uniform Probate Code — exempt property, 72-2-802.

Uniform Probate Code — family allowance, 72-2-803.

Part 1

Establishment of the Homestead

70-32-101. Of what homestead consists. The homestead consists of the dwelling house or mobile home, and all appurtenances, in which the claimant resides and the land, if any, on which the same is situated, selected as provided in this chapter.

History: En. Sec. 1670, Civ. C. 1895; re-en. Sec. 4694, Rev. C. 1907; re-en. Sec. 6945, R.C.M. 1921; Cal. Civ. C. Sec. 1237; re-en. Sec. 6945, R.C.M. 1935; R.C.M. 1947, 33-101; amd. Sec. 1, Ch. 370, L. 1981.

70-32-102. Repealed. Sec. 9, Ch. 370, L. 1981.

History: En. Sec. 1694, Civ. C. 1895; re-en. Sec. 4718, Rev. C. 1907; re-en. Sec. 6969, R.C.M. 1921; Cal. Civ. C. Sec. 1261; amd. Sec. 1, Ch. 86, L. 1925; re-en. Sec. 6969, R.C.M. 1935; amd. Sec. 3, Ch. 1, L. 1975; R.C.M. 1947, 33-125.

70-32-103. From whose property homestead may be selected. If the claimant be married, the homestead may be selected from the property of either spouse. When the claimant is not married, the homestead may be selected from any of his or her property.

History: En. Sec. 1671, Civ. C. 1895; re-en. Sec. 4695, Rev. C. 1907; re-en. Sec. 6946, R.C.M. 1921; Cal. Civ. C. Sec. 1238; re-en. Sec. 6946, R.C.M. 1935; amd. Sec. 1, Ch. 1, L. 1975; R.C.M. 1947, 33-102; amd. Sec. 2, Ch. 370, L. 1981.

70-32-104. Limitation on value. (1) A homestead may not exceed in value $40,000. In any proceedings instituted to determine the value of such homestead, the assessed value of the land with included appurtenances, if any, and of the dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

(2) If a claimant who is an owner of an undivided interest in real property claims a homestead exemption, he is limited to an exemption amount proportional to his undivided interest.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R.C.M. 1921; Cal. Civ. C. Sec. 1260; amd. Sec. 1, Ch. 126, L. 1931; re-en. Sec. 6968, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965; amd. Sec. 1, Ch. 300, L. 1973; R.C.M. 1947, 33-124; amd. Sec. 3, Ch. 370, L. 1981; amd. Sec. 8, Ch. 302, L. 1987.

70-32-105. Mode of selection — declaration required. The person selecting a homestead must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead and file the same for record.

History: En. Sec. 1700, Civ. C. 1895; re-en. Sec. 4719, Rev. C. 1907; re-en. Sec. 6970, R.C.M. 1921; Cal. Civ. C. Sec. 1262; re-en. Sec. 6970, R.C.M. 1935; amd. Sec. 4, Ch. 1, L. 1975; R.C.M. 1947, 33-126; amd. Sec. 4, Ch. 370, L. 1981.

70-32-106. Contents of declaration. The declaration of homestead must contain a statement that the person making it is residing on the premises and claims them as a homestead and a description of the premises.

History: En. Sec. 1701, Civ. C. 1895; re-en. Sec. 4720, Rev. C. 1907; re-en. Sec. 6971, R.C.M. 1921; Cal. Civ. C. Sec. 1263; re-en. Sec. 6971, R.C.M. 1935; amd. Sec. 5, Ch. 1, L. 1975; R.C.M. 1947, 33-127; amd. Sec. 5, Ch. 370, L. 1981.

70-32-107. Declaration to be recorded. The declaration must be recorded in the office of the county clerk of the county in which the land is situated.

History: En. Sec. 1702, Civ. C. 1895; re-en. Sec. 4721, Rev. C. 1907; re-en. Sec. 6972, R.C.M. 1921; Cal. Civ. C. Sec. 1264; re-en. Sec. 6972, R.C.M. 1935; R.C.M. 1947, 33-128.

Part 2

Homestead Exemption — Execution

70-32-201. Homestead exempt from execution generally. The homestead is exempt from execution or forced sale, except as in this chapter provided.

History: En. Sec. 1673, Civ. C. 1895; re-en. Sec. 4697, Rev. C. 1907; re-en. Sec. 6948, R.C.M. 1921; Cal. Civ. C. Sec. 1240; re-en. Sec. 6948, R.C.M. 1935; R.C.M. 1947, 33-104.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Exempt property — bankruptcy proceeding, 31-2-106.

70-32-202. Execution allowed under certain judgments. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

(1) on debts secured by construction or vendors' liens upon the premises;

(2) on debts secured by mortgages on the premises, executed and acknowledged by the husband and wife or by an unmarried claimant; or

(3) on debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

History: En. Sec. 1674, Civ. C. 1895; re-en. Sec. 4698, Rev. C. 1907; re-en. Sec. 6949, R.C.M. 1921; Cal. Civ. C. Sec. 1241; re-en. Sec. 6949, R.C.M. 1935; R.C.M. 1947, 33-105(part); amd. Sec. 6, Ch. 370, L. 1981.

Cross-References

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

70-32-203. Execution under judgments not enumerated — application required. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in 70-32-202 is levied upon the homestead, the judgment creditor may apply to the district court of the county in which the homestead is situated or a judge thereof for the appointment of persons to appraise the value thereof.

History: En. Sec. 1678, Civ. C. 1895; re-en. Sec. 4702, Rev. C. 1907; re-en. Sec. 6953, R.C.M. 1921; Cal. Civ. C. Sec. 1245; re-en. Sec. 6953, R.C.M. 1935; R.C.M. 1947, 33-109.

70-32-204. Application for appraisal — contents — filing. (1) The application must be made upon a verified petition showing:

(a) the fact that an execution has been levied upon the homestead;
(b) the name of the claimant;
(c) that the value of the homestead exceeds the amount of the homestead exemption.

(2) The petition must be filed with the clerk of the district court.

History: En. Secs. 1679, 1680, Civ. C. 1895; re-en. Secs. 4703, 4704, Rev. C. 1907; re-en. Secs. 6954, 6955, R.C.M. 1921; Cal. Civ. C. Secs. 1246, 1247; re-en. Secs. 6954, 6955, R.C.M. 1935; R.C.M. 1947, 33-110, 33-111.

70-32-205. Service of petition — notice of hearing. A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant at least 2 days before the hearing.

History: En. Sec. 1681, Civ. C. 1895; re-en. Sec. 4705, Rev. C. 1907; re-en. Sec. 6956, R.C.M. 1921; Cal. Civ. C. Sec. 1248; re-en. Sec. 6956, R.C.M. 1935; R.C.M. 1947, 33-112.

70-32-206. Appointment of appraisers — oath. (1) At the hearing the judge may, upon proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value of the homestead.

(2) The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

History: En. Secs. 1682, 1683, Civ. C. 1895; re-en. Secs. 4706, 4707, Rev. C. 1907; re-en. Secs. 6957, 6958, R.C.M. 1921; Cal. Civ. C. Secs. 1249, 1250; re-en. Secs. 6957, 6958, R.C.M. 1935; R.C.M. 1947, 33-113, 33-114.

70-32-207. Duty of appraisers. They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption, they must determine whether the land claimed can be divided without material injury.

History: En. Sec. 1684, Civ. C. 1895; re-en. Sec. 4708, Rev. C. 1907; re-en. Sec. 6959, R.C.M. 1921; Cal. Civ. C. Sec. 1251; re-en. Sec. 6959, R.C.M. 1935; R.C.M. 1947, 33-115.

70-32-208. Report of appraisers — contents. Within 15 days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

History: En. Sec. 1685, Civ. C. 1895; re-en. Sec. 4709, Rev. C. 1907; re-en. Sec. 6960, R.C.M. 1921; Cal. Civ. C. Sec. 1252; re-en. Sec. 6960, R.C.M. 1935; R.C.M. 1947, 33-116.

70-32-209. Order dividing land — execution against remainder over exemption. If from the report it appears to the judge that the land claimed can be divided without material injury, he must by an order direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

History: En. Sec. 1686, Civ. C. 1895; re-en. Sec. 4710, Rev. C. 1907; re-en. Sec. 6961, R.C.M. 1921; Cal. Civ. C. Sec. 1253; re-en. Sec. 6961, R.C.M. 1935; R.C.M. 1947, 33-117.

70-32-210. Sale when land cannot be divided. If from the report it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption and that it cannot be divided, he must make an order directing its sale under execution.

History: En. Sec. 1687, Civ. C. 1895; re-en. Sec. 4711, Rev. C. 1907; re-en. Sec. 6962, R.C.M. 1921; Cal. Civ. C. Sec. 1254; re-en. Sec. 6962, R.C.M. 1935; R.C.M. 1947, 33-118.

70-32-211. Amount of bid. At such sale no bid must be received unless it exceeds the amount of the homestead exemption.

History: En. Sec. 1688, Civ. C. 1895; re-en. Sec. 4712, Rev. C. 1907; re-en. Sec. 6963, R.C.M. 1921; Cal. Civ. C. Sec. 1255; re-en. Sec. 6963, R.C.M. 1935; R.C.M. 1947, 33-119.

70-32-212. Application of proceeds of sale. If the sale is made, the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution.

History: En. Sec. 1689, Civ. C. 1895; re-en. Sec. 4713, Rev. C. 1907; re-en. Sec. 6964, R.C.M. 1921; Cal. Civ. C. Sec. 1256; re-en. Sec. 6964, R.C.M. 1935; R.C.M. 1947, 33-120.

70-32-213. Sale proceeds equal to exemption protected. The money paid to the claimant is entitled, for the period of 18 months thereafter, to the same protection against legal process and the voluntary disposition of either spouse which the law gives to the homestead.

History: En. Sec. 1690, Civ. C. 1895; re-en. Sec. 4714, Rev. C. 1907; re-en. Sec. 6965, R.C.M. 1921; Cal. Civ. C. Sec. 1257; re-en. Sec. 6965, R.C.M. 1935; amd. Sec. 2, Ch. 1, L. 1975; R.C.M. 1947, 33-121; amd. Sec. 9, Ch. 302, L. 1987.

70-32-214. Compensation of appraisers. The court must fix a reasonable amount as compensation for the appraisers.

History: En. Sec. 1691, Civ. C. 1895; re-en. Sec. 4715, Rev. C. 1907; re-en. Sec. 6966, R.C.M. 1921; Cal. Civ. C. Sec. 1258; re-en. Sec. 6966, R.C.M. 1935; R.C.M. 1947, 33-122; amd. Sec. 10, Ch. 302, L. 1987.

70-32-215. Costs. The execution creditor must pay the costs of these proceedings in the first instance, but in the cases provided for in 70-32-209 and 70-32-210, the amount so paid must be added as costs on execution and collected accordingly.

History: En. Sec. 1692, Civ. C. 1895; re-en. Sec. 4716, Rev. C. 1907; re-en. Sec. 6967, R.C.M. 1921; Cal. Civ. C. Sec. 1259; re-en. Sec. 6967, R.C.M. 1935; R.C.M. 1947, 33-123.

70-32-216. Tracing homestead proceeds. (1) If property or a part thereof that could have been claimed as an exempt homestead has been sold or taken by condemnation or has been lost, damaged, or destroyed and the owner has been indemnified for it, he is entitled for 18 months to exemption of the proceeds that are traceable.

(2) Proceeds are traceable under this section by application of the principles of first-in first-out, last-in first-out, or any other reasonable basis for tracing selected by the judgment debtor.

History: En. Sec. 6, Ch. 302, L. 1987.

Cross-References

Tracing exempt personal property, 25-13-610.

70-32-217 through 70-32-220 reserved.

70-32-221. Homestead subject to execution for certain judgments — separate acknowledgment required. (1) If a borrower borrowing money from a regulated lender, as defined in 31-1-111, or a farm credit system lender encumbers real property that otherwise would qualify as a homestead under Title 70, chapter 32, the lender shall require the borrower to sign a written statement acknowledging that the real property is not exempt from execution as a homestead because under 70-32-202 it is subject to execution or forced sale to satisfy a judgment obtained on a debt secured by a mortgage or other encumbrance on the premises. The written acknowledgment may be in a document separate from, or may be included in, the loan agreement or loan documents and must be printed in capital letters of not less than 10-point boldfaced type and signed separately by the borrower.

(2) The lender shall retain a copy of the acknowledgment provided for in subsection (1) until the mortgage or other encumbrance is paid or otherwise satisfied or discharged unless the acknowledgment is of record in the office of the clerk and recorder.

History: En. Sec. 1, Ch. 590, L. 1987; amd. Sec. 2, Ch. 294, L. 1991.

Compiler's Comments

1991 Amendment: In two places substituted "lender" for "financial institution"; near beginning of (1), after "31-1-111", deleted "a mutual or stock insurance company regulated by any state"; and made minor change in style.

Cross-References

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Exempt property — bankruptcy proceeding, 31-2-106.

Part 3

Conveyance, Encumbrance, and Abandonment of Homestead

70-32-301. How conveyed or encumbered — instrument. The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.

History: En. Sec. 1675, Civ. C. 1895; re-en. Sec. 4699, Rev. C. 1907; re-en. Sec. 6950, R.C.M. 1921; Cal. Civ. C. Sec. 1242; re-en. Sec. 6950, R.C.M. 1935; R.C.M. 1947, 33-106.

70-32-302. How abandoned — declaration. A homestead can be abandoned only by a declaration of abandonment or a grant thereof executed and acknowledged by:

(1) the husband and wife if the claimant is married;

(2) the claimant if unmarried.

History: En. Sec. 1676, Civ. C. 1895; re-en. Sec. 4700, Rev. C. 1907; re-en. Sec. 6951, R.C.M. 1921; Cal. Civ. C. Sec. 1243; re-en. Sec. 6951, R.C.M. 1935; R.C.M. 1947, 33-107.

70-32-303. When declaration effective. A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

History: En. Sec. 1677, Civ. C. 1895; re-en. Sec. 4701, Rev. C. 1907; re-en. Sec. 6952, R.C.M. 1921; Cal. Civ. C. Sec. 1244; re-en. Sec. 6952, R.C.M. 1935; R.C.M. 1947, 33-108.

TITLE 71

MORTGAGES, PLEDGES, AND LIENS

Ch.
1. Mortgages.
2. Pledges.
3. Liens.

CHAPTER 1

MORTGAGES

Part 1 — General Provisions

71-1-101. Definition.
71-1-102. Power of attorney to execute.
71-1-103. Mortgage a special lien — on what a lien.
71-1-104. Mortgage not a personal obligation.
71-1-105. Mortgagee not entitled to possession.
71-1-106. Waste prohibited.
71-1-107. Transfers of interest.
71-1-108. Subsequently acquired title.
71-1-109. Mortgage of property adversely held.
71-1-110. Passage of mortgage by assignment of debt.
71-1-111. Power of sale.
71-1-112. Applicable laws.
71-1-113. Limit on the amount of funds on reserve.
71-1-114. Exception to limitation.
71-1-115. Record of reserve fund required.

Part 2 — Mortgages of Real Property

71-1-201. What real property may be mortgaged — debts secured.
71-1-202. Mortgage not considered conveyance — recovery of possession.
71-1-203. Writing required.
71-1-204. Form of mortgage.
71-1-205. Priorities.
71-1-206. Future advances.
71-1-207. Recording of mortgages and assignments.
71-1-208. Recording of subordination or waiver agreements.
71-1-209. Recording defeasance necessary to affect grant.
71-1-210. Period of mortgage — renewal.
71-1-211. Satisfaction of mortgage — record thereof.
71-1-212. Penalties for failure to give certificate of discharge or release after full performance.
71-1-213. Discharge or release by other than mortgagee.
71-1-214 through 71-1-220 reserved.
71-1-221. Definition of foreclosure.
71-1-222. Proceedings in foreclosure suits.
71-1-223. Power of sale.
71-1-224. Sale — notice.

71-1-225. Surplus money from sale.
71-1-226. Proceedings when debt secured falls due at different times.
71-1-227. Injunction to prevent injury to property.
71-1-228. Rights of redemption applicable.
71-1-229. Possession of lands prior to foreclosure upon default and during period of redemption.
71-1-230. Action to redeem mortgage.
71-1-231. Redemption by multiple mortgagors.
71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage.
71-1-233. Attorney's fee on foreclosure.
71-1-234. Attorney's fee — petition and notice.
71-1-235. Instruments — negotiability and remedies.

Part 3 — Small Tract Financing

71-1-301. Short title.
71-1-302. Policy.
71-1-303. Definitions.
71-1-304. Trust indentures authorized — power of sale for breach in trustee.
71-1-305. Trust indenture considered to be mortgage on real property.
71-1-306. Qualifications of trustee — successor trustee.
71-1-307. Reconveyance upon performance — liability for failure to reconvey.
71-1-308 through 71-1-310 reserved.
71-1-311. Time for foreclosure same as mortgage.
71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid.
71-1-313. Conditions for foreclosure by advertisement and sale.
71-1-314. Requests for copies of notice of sale.
71-1-315. Notice — sale — payment.
71-1-316. Disposition of proceeds of sale.
71-1-317. Deficiency judgment not allowed.
71-1-318. Trustee's deed.
71-1-319. Possession.
71-1-320. Trustees' fees and attorneys' fees.
71-1-321. Deeds of trust and trust deeds not invalidated.

Chapter Cross-References

Venue in action involving real property, 25-2-123.

Costs allowed to plaintiff in action to foreclose lien, 25-10-101.

Redemption of real property, Title 25, ch. 13, part 8.

When a receiver may be appointed in foreclosure of mortgage, 27-20-102.

Scope of U.C.C. chapter on secured transactions, 30-9-102.

Transactions excluded from U.C.C. chapter on secured transactions, 30-9-104.

Powers and duties of building and loan associations, 32-2-401.

Servicemen's Readjustment Act of 1944, 32-2-420.

National Housing Act loans, Title 32, ch. 2, part 5.

Agricultural association — execution, record, and foreclosure of a mortgage, 35-16-405, 35-16-406.

Lender to require borrower's acknowledgment when encumbered real property not exempt from execution as homestead, 70-32-221.

Claims on a decedent's estate, 72-3-803.

Encumbered assets of a decedent's estate, 72-3-812.

Pledges and mortgages of leasehold interest in state land, 77-6-401 through 77-6-404.

Security interest in livestock, Title 81, ch. 8, part 3.

Financing programs of Board of Housing, 90-6-108.

Part 1

General Provisions

Part Cross-References
Montana Title Insurance Act, Title 33, ch. 25.

71-1-101. Definition. "Mortgage" is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

History: En. Sec. 3810, Civ. C. 1895; re-en. Sec. 5731, Rev. C. 1907; re-en. Sec. 8246, R.C.M. 1921; Cal. Civ. C. Sec. 2920; Field Civ. C. Sec. 1608; re-en. Sec. 8246, R.C.M. 1935; R.C.M. 1947, 52-101.

Cross-References
"Mortgage" used in reference to a security interest in personal property to include security interest under the U.C.C., 1-1-205.

"Security interest" defined, 30-1-201.

71-1-102. Power of attorney to execute. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

History: En. Sec. 3822, Civ. C. 1895; re-en. Sec. 5743, Rev. C. 1907; re-en. Sec. 8258, R.C.M. 1921; Cal. Civ. C. Sec. 2933; re-en. Sec. 8258, R.C.M. 1935; R.C.M. 1947, 52-113.

Cross-References
Discharge or release by other than mortgagee, 71-1-213.

Powers of attorney, Title 72, ch. 5, part 5.

71-1-103. Mortgage a special lien — on what a lien. (1) The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

(2) A mortgage is a lien upon everything that would pass by a grant of the property.

History: (1)En. Sec. 3812, Civ. C. 1895; re-en. Sec. 5733, Rev. C. 1907; re-en. Sec. 8248, R.C.M. 1921; Cal. Civ. C. Sec. 2923; Field Civ. C. Sec. 1609; re-en. Sec. 8248, R.C.M. 1935; Sec. 52-103, R.C.M. 1947; (2)En. Sec. 3815, Civ. C. 1895; re-en. Sec. 5736, Rev. C. 1907; re-en. Sec. 8251, R.C.M. 1921; Cal. Civ. C. Sec. 2926; Based on Field Civ. C. Sec. 1617; re-en. Sec. 8251, R.C.M. 1935; Sec. 52-106, R.C.M. 1947; R.C.M. 1947, 52-103, 52-106.

Cross-References
Liens, Title 71, ch. 3.

71-1-104. Mortgage not a personal obligation. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security unless there is an express covenant therein to that effect.

History: En. Sec. 3817, Civ. C. 1895; re-en. Sec. 5738, Rev. C. 1907; re-en. Sec. 8253, R.C.M. 1921; Cal. Civ. C. Sec. 2928; re-en. Sec. 8253, R.C.M. 1935; R.C.M. 1947, 52-108.

Cross-References
Defendants personally liable — foreclosure proceedings, 71-1-222.

71-1-105. Mortgagee not entitled to possession. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage, but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

History: En. Sec. 3816, Civ. C. 1895; re-en. Sec. 5737, Rev. C. 1907; re-en. Sec. 8252, R.C.M. 1921; Cal. Civ. C. Sec. 2927; Based on Field Civ. C. Sec. 1620; re-en. Sec. 8252, R.C.M. 1935; R.C.M. 1947, 52-107.

71-1-106. Waste prohibited. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

History: En. Sec. 3818, Civ. C. 1895; re-en. Sec. 5739, Rev. C. 1907; re-en. Sec. 8254, R.C.M. 1921; Cal. Civ. C. Sec. 2929; re-en. Sec. 8254, R.C.M. 1935; R.C.M. 1947, 52-109.

Cross-References

Injunction to prevent injury to property, 71-1-227.

71-1-107. Transfers of interest. (1) Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

(2) The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

History: (1)En. Sec. 3813, Civ. C. 1895; re-en. Sec. 5734, Rev. C. 1907; re-en. Sec. 8249, R.C.M. 1921; Cal. Civ. C. Sec. 2924; Based on Field Civ. C. Sec. 1610; re-en. Sec. 8249, R.C.M. 1935; Sec. 52-104, R.C.M. 1947; (2)En. Sec. 3814, Civ. C. 1895; re-en. Sec. 5735, Rev. C. 1907; re-en. Sec. 8250, R.C.M. 1921; Cal. Civ. C. Sec. 2925; Field Civ. C. Sec. 1612; re-en. Sec. 8250, R.C.M. 1935; Sec. 52-105, R.C.M. 1947; R.C.M. 1947, 52-104, 52-105.

71-1-108. Subsequently acquired title. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

History: En. Sec. 3819, Civ. C. 1895; re-en. Sec. 5740, Rev. C. 1907; re-en. Sec. 8255, R.C.M. 1921; Cal. Civ. C. Sec. 2930; re-en. Sec. 8255, R.C.M. 1935; R.C.M. 1947, 52-110.

71-1-109. Mortgage of property adversely held. A mortgage may be created upon property held adversely to the mortgagor.

History: En. Sec. 3811, Civ. C. 1895; re-en. Sec. 5732, Rev. C. 1907; re-en. Sec. 8247, R.C.M. 1921; Cal. Civ. C. Sec. 2921; Field Civ. C. Sec. 1614; re-en. Sec. 8247, R.C.M. 1935; R.C.M. 1947, 52-102.

71-1-110. Passage of mortgage by assignment of debt. The assignment of a debt secured by mortgage carries with it the security.

History: En. Sec. 3825, Civ. C. 1895; re-en. Sec. 5746, Rev. C. 1907; re-en. Sec. 8261, R.C.M. 1921; Cal. Civ. C. Sec. 2936; re-en. Sec. 8261, R.C.M. 1935; R.C.M. 1947, 52-115.

71-1-111. Power of sale. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

History: En. Sec. 3821, Civ. C. 1895; re-en. Sec. 5742, Rev. C. 1907; re-en. Sec. 8257, R.C.M. 1921; Cal. Civ. C. Sec. 2932; Field Civ. C. Sec. 1615; re-en. Sec. 8257, R.C.M. 1935; R.C.M. 1947, 52-112.

Cross-References

Power of sale, 71-1-223.

71-1-112. Applicable laws. (1) In the event of conflict between any provision of this part and the Uniform Commercial Code, the latter shall govern.

(2) All mortgages and deeds of trust covering both real and personal property executed by a corporation, association, or partnership or by an individual or individuals are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned and by the Uniform Commercial Code—Secured Transactions so far as the personal property is concerned.

History: (1)En. 52-117 by Sec. 11-133, Ch. 264, L. 1963; Sec. 52-117, R.C.M. 1947; (2)En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; re-en. Sec. 8273, R.C.M. 1935; amd. Sec. 11-134, Ch. 264, L. 1963; Sec. 52-212, R.C.M. 1947; R.C.M. 1947, 52-117, 52-212.

Cross-References

Uniform Commercial Code, Title 30, ch. 1 through 9.

71-1-113. Limit on the amount of funds on reserve. Except as provided in 71-1-114, if a lending institution requires a borrower under a mortgage or trust indenture of real property to include in his regular payment additional payment into a reserve fund held by the lending institution for the future payment of property taxes, insurance premiums, and other expenses, the amount of funds on reserve may not exceed 110% of the projected amount needed to pay such expenses.

History: En. Sec. 1, Ch. 490, L. 1979.

71-1-114. Exception to limitation. If the borrower desires, the lending institution and borrower may enter into a written contract in which they agree that the funds on reserve exceed 110% of the reasonable amount needed to pay such expenses.

History: En. Sec. 2, Ch. 490, L. 1979.

71-1-115. Record of reserve fund required. Every lending institution shall keep an itemized record of each payment entered into the reserve fund and each disbursement withdrawn from the reserve fund. The lending institution shall annually mail a statement of total receipts and disbursements to each borrower under a mortgage or trust indenture of real property.

History: En. Sec. 3, Ch. 490, L. 1979.

Part 2

Mortgages of Real Property

Part Cross-References

Montana Title Insurance Act, Title 33, ch. 25.

71-1-201. What real property may be mortgaged — debts secured. Any interest in real property which is capable of being transferred may be mortgaged. Such property or interest may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

71-1-202. Mortgage not considered conveyance — recovery of possession. A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale. When the mortgage confers a power of sale, as mentioned in 71-1-111, possession may be recovered according to the terms of the mortgage.

History: En. Sec. 239, p. 93, Bannack Stat.; re-en. Sec. 260, p. 188, L. 1867; re-en. Sec. 309, p. 95, Cod. Stat. 1871; re-en. Sec. 359, p. 139, L. 1877; re-en. Sec. 359, 1st Div. Rev. Stat. 1879; re-en. Sec. 371, 1st Div. Comp. Stat. 1887; amd. Sec. 1316, C. Civ. Proc. 1895; re-en. Sec. 6877, Rev. C. 1907; re-en. Sec. 9495, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 744; re-en. Sec. 9495, R.C.M. 1935; R.C.M. 1947, 93-6219.

Cross-References

Definition of foreclosure, 71-1-221.

Possession of lands prior to foreclosure upon default and during period of redemption, 71-1-229.

71-1-203. Writing required. A mortgage of real property can be created, renewed, or extended only by writing, with the formalities required in the case of a grant of real property.

History: En. Sec. 3842, Civ. C. 1895; re-en. Sec. 5749, Rev. C. 1907; re-en. Sec. 8264, R.C.M. 1921; Cal. Civ. C. Sec. 2922; Field Civ. C. Sec. 1623; re-en. Sec. re-en. Sec. 8264, R.C.M. 1935; R.C.M. 1947, 52-203.

Cross-References

What contracts must be in writing, 28-2-903.

Transfer of property grants and their interpretation, Title 70, ch. 1, part 5.

Transfer of real property — Statute of Frauds, 70-20-101.

Recording transfers of real property, Title 70, ch. 21.

Recording of mortgages and assignments, 71-1-207.

Period of mortgage — renewal, 71-1-210.

71-1-204. Form of mortgage. A mortgage of real property may be made in substantially the following form:

"This mortgage, made the .... day of ...., in the year ...., by A.B., of ...., mortgagor, to C.D., of ...., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of .... dollars, on (or before) the .... day of ...., in the year ...., with interest thereon (or as security for the payment of an obligation, describing it, etc.). A.B."

History: En. Sec. 3841, Civ. C. 1895; re-en. Sec. 5748, Rev. C. 1907; re-en. Sec. 8263, R.C.M. 1921; Cal. Civ. C. Sec. 2948; re-en. Sec. 8263, R.C.M. 1935; R.C.M. 1947, 52-202.

71-1-205. Priorities. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part).

Cross-References

Tax on personalty lien on realty, 15-16-402.

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — crop or grain liens for spraying or dusting, 71-3-904.

Priority — laborers' and materialmen's liens on oil and gas well and pipeline, 71-3-1007.

71-1-206. Future advances. (1) The amount of future advances or total indebtedness that may be outstanding at any given time and subject to mortgage protection must be stated in the mortgage. The mortgagee may reserve the right, at the mortgagee's option, to refuse to make all or any part of a future advance. The total amount of indebtedness that may be secured by the mortgage may decrease or increase from time to time, but the total principal amount of the obligations secured at any one time may not exceed the face amount stated in the mortgage together with interest as provided in the instrument secured by the mortgage.

(2) The lien for the stated amount of future advances or total indebtedness shall, notwithstanding the fact that from time to time during the term of the mortgage no indebtedness is due from the mortgagor to the mortgagee, have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The lien extends to interest as provided in the instrument secured by the mortgage.

(3) The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto, and the principal amount of the original indebtedness and the limit placed on contemplated

future advances, if allowed. Upon the recording of such written notice by the mortgagor in the county and counties where the mortgage is recorded, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due, and other charges as evidenced by the original loan-contract and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. The mortgagor retains the right to demand satisfaction of the mortgage at any time the balance is zero.

History: En. Sec. 3840, Civ. C. 1895; re-en. Sec. 5747, Rev. C. 1907; re-en. Sec. 8262, R.C.M. 1921; Cal. Civ. C. Sec. 2947; re-en. Sec. 8262, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1949; R.C.M. 1947, 52-201(part); amd. Sec. 1, Ch. 351, L. 1985.

Cross-References

Future advances under U.C.C., 30-9-204.

71-1-207. Recording of mortgages and assignments. (1) Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof.

(2) An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons, including subsequent purchasers, encumbrancers, mortgagees, or other lien holders. Any such assignment shall contain the assignee's post-office address at his place of residence and shall not be entitled to be recorded or filed unless it contains such post-office address.

History: (1)En. Sec. 3844, Civ. C. 1895; re-en. Sec. 5751, Rev. C. 1907; re-en. Sec. 8266, R.C.M. 1921; Cal. Civ. C. Sec. 2952; re-en. Sec. 8266, R.C.M. 1935; Sec. 52-205, R.C.M. 1947; (2)En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R.C.M. 1921; Cal. Civ. C. Sec. 2934; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; re-en. Sec. 8259, R.C.M. 1935; amd. Sec. 11-131, Ch. 264, L. 1963; Sec. 52-114, R.C.M. 1947; R.C.M. 1947, 52-114, 52-205.

Cross-References

Indexes to recorded documents, 7-4-2619.

Assignment of security interest, 30-9-405.

Recording transfers of real property, Title 70, ch. 21, part 2.

Recording of mortgages, 70-21-202.

Writing required, 71-1-203.

71-1-208. Recording of subordination or waiver agreements. A subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers, or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved.

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963; R.C.M. 1947, 52-116.

71-1-209. Recording defeasance necessary to affect grant. When a grant of real property purports to be an absolute conveyance but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees or persons having actual notice unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county clerk of the county where the property is situated.

History: **En. Sec. 3843, Civ. C. 1895; re-en. Sec. 5750, Rev. C. 1907; re-en. Sec. 8265, R.C.M. 1921; Cal. Civ. C. Sec. 2950; re-en. Sec. 8265, R.C.M. 1935; R.C.M. 1947, 52-204.**

71-1-210. Period of mortgage — renewal. Every mortgage of real property made, acknowledged, and recorded as provided by the laws of this state shall be good as against all from the time it is so recorded until 8 years after the maturity of the entire debt or obligation secured thereby and no longer, unless the mortgagee, his heirs, executors, administrators, representatives, or assigns shall, within 60 days after the expiration of said 8 years, file in the office of the county clerk where said mortgage is recorded an affidavit setting forth the date of said mortgage, when and where recorded, the amount of the debt secured thereby, and the amount remaining unpaid and that the mortgage is not renewed for the purpose of hindering, delaying, or defrauding creditors of the mortgagor or owner of the land, and upon the filing of said affidavit, the mortgage shall be valid against all persons for a further period of 8 years.

History: **En. Sec. 1, Ch. 27, L. 1913; re-en. Sec. 8267, R.C.M. 1921; amd. Sec. 1, Ch. 104, L. 1933; re-en. Sec. 8267, R.C.M. 1935; R.C.M. 1947, 52-206.**

Cross-References

Small tract financing — time for foreclosure, 71-1-311.

71-1-211. Satisfaction of mortgage — record thereof. (1) A mortgage shall be discharged upon the record thereof by the county clerk in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged or proved and certified as in this code prescribed to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

(2) Every such certificate and the proof and acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the mortgagor and mortgagee indexes as to the discharge of such mortgage.

History: **En. Secs. 37, 38, p. 485, Bannack Stat.; re-en. Secs. 37, 38, p. 402, Cod. Stat. 1871; re-en. Secs. 214, 215, 5th Div. Rev. Stat. 1879; re-en. Secs. 272, 273, 5th Div. Comp. Stat. 1887; re-en. Secs. 3846, 3847, Civ. C. 1895; re-en. Secs. 5753, 5754, Rev. C. 1907; re-en. Secs. 8269, 8270, R.C.M. 1921; Cal. Civ. C. Secs. 2939, 2940; re-en. Secs. 8269, 8270, R.C.M. 1935; R.C.M. 1947, 52-208, 52-209; amd. Sec. 1, Ch. 127, L. 1981.**

71-1-212. Penalties for failure to give certificate of discharge or release after full performance. Any mortgagee or his personal representative or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall for the space of 30 days after being requested refuse or neglect to execute, acknowledge, and deliver to the mortgagor a certificate of discharge or release thereof shall be liable to the mortgagor, his heirs, or assigns in the sum of $100 and also for all actual damages occasioned by such neglect or refusal.

History: En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part).

71-1-213. Discharge or release by other than mortgagee. (1) If the discharge or release is made by the personal representative of the mortgagee, it must be accompanied by a certified copy of his authority unless such authority is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(2) If the discharge or release is made by an assignee, it must be accompanied by the assignment of the mortgage unless the assignment is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(3) If the discharge or release is executed by an attorney in fact, the discharge or release must have attached to it the power of attorney under which it is made unless the power of attorney is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(4) If the discharge or release is executed by the heir or heirs of the mortgagee, the discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing such authority unless the order or decree is already of record in the office of the county clerk and recorder where the mortgage is recorded.

(5) Foreign administrators and executors may discharge or release mortgages of record in Montana if the discharge or release of mortgages is accompanied by an authenticated copy of their letters of administration or letters testamentary, with the certificate of the clerk of the court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be recorded with the discharge or release of the mortgage. When presented and recorded, the discharge or release has the same effect as if the mortgage was discharged or released by the mortgagee.

History: En. Sec. 39, p. 486, Bannack Stat.; re-en. Sec. 39, p. 402, Cod. Stat. 1871; re-en. Sec. 216, 5th Div. Rev. Stat. 1879; re-en. Sec. 274, 5th Div. Comp. Stat. 1887; re-en. Sec. 3748, Civ. C. 1895; re-en. Sec. 5755, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1921; re-en. Sec. 8271, R.C.M. 1921; Cal. Civ. C. Sec. 2941; re-en. Sec. 8271, R.C.M. 1935; R.C.M. 1947, 52-210(part); amd. Sec. 1, Ch. 11, L. 1979.

Cross-References

Power of attorney to execute, 71-1-102.

71-1-214 through 71-1-220 reserved.

71-1-221. Definition of foreclosure. The term "foreclosure" for the purpose of this part shall include sale or possession of real property made or taken whether by judicial proceedings or otherwise.

History: En. Sec. 2, Ch. 2, L. 1935; re-en. Sec. 9473.2, R.C.M. 1935; R.C.M. 1947, 93-6009.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Mortgage not considered a conveyance, 71-1-202.

Possession of lands prior to foreclosure upon default and during period of redemption, 71-1-229.

71-1-222. Proceedings in foreclosure suits. (1) There is but one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, which action must be in accordance with the provisions of this part. In such action the court may, by its judgment, direct:

(a) a sale of the encumbered property (or so much thereof as may be necessary);

(b) the application of the proceeds of the sale; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of such judgment debtor, as in other cases on which execution may be issued.

(3) No person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, need be made a party to such action. The judgment therein rendered and the proceedings therein had are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

History: En. Sec. 223, p. 90, Bannack Stat.; en. Sec. 246, p. 185, L. 1867; re-en. Sec. 295, p. 92, Cod. Stat. 1871; re-en. Sec. 346, p. 135, L. 1877; re-en. Sec. 346, 1st Div. Rev. Stat. 1879; re-en. Sec. 358, 1st Div. Comp. Stat. 1887; amd. Sec. 1290, C. Civ. Proc. 1895; re-en. Sec. 6861, Rev. C. 1907; re-en. Sec. 9467, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 726; re-en. Sec. 9467, R.C.M. 1935; amd. Sec. 11-166, Ch. 264, L. 1963; R.C.M. 1947, 93-6001.

Cross-References

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Mortgage not a personal obligation, 71-1-104.

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

Attorney's fee on foreclosure, 71-1-233.

71-1-223. Power of sale. When a real estate mortgage confers a power of sale, either upon the mortgagee or any other person, to be executed after a breach of the obligation for which the mortgage is a security, either an action may be maintained under this part to foreclose or proceedings may be had under the provisions of the mortgage.

History: En. Sec. 1293, C. Civ. Proc. 1895; re-en. Sec. 6864, Rev. C. 1907; re-en. Sec. 9470, R.C.M. 1921; re-en. Sec. 9470, R.C.M. 1935; amd. Sec. 11-167, Ch. 264, L. 1963; R.C.M. 1947, 93-6004.

Cross-References

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Power of sale conferred by a mortgage, 71-1-111.

71-1-224. Sale — notice. Real estate sold under a power of sale given and contained in a mortgage of real estate, except in a trust indenture as defined in the "Small Tract Financing Act of Montana", shall be advertised for sale at least 30 days before the date fixed for such sale, in a newspaper in the county in which such real estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the publication or posting, as hereinbefore provided, notices of such sale must be served personally at least 30 days before the date fixed for such sale upon the occupant of the property so advertised for sale and upon the mortgagor if within the state of Montana and upon every person or persons having or claiming an interest of record in the real estate so advertised for sale who may be found within the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1917; re-en. Sec. 9471, R.C.M. 1921; re-en. Sec. 9471, R.C.M. 1935; amd. Sec. 18, Ch. 177, L. 1963; R.C.M. 1947, 93-6005.

Cross-References

Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.

Right of redemption, 71-1-228.

Petition for attorney's fee, 71-1-234.

Small Tract Financing Act of Montana, Title 71, ch. 1, part 3.

71-1-225. Surplus money from sale. If there be surplus money remaining after the payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause the same to be paid to the person entitled to it and in the meantime may direct it to be deposited in court.

History: En. Sec. 247, p. 186, L. 1867; re-en. Sec. 296, p. 92, Cod. Stat. 1871; re-en. Sec. 347, p. 136, L. 1877; re-en. Sec. 347, 1st Div. Rev. Stat. 1879; re-en. Sec. 359, 1st Div. Comp. Stat. 1887; re-en. Sec. 1291, C. Civ. Proc. 1895; re-en. Sec. 6862, Rev. C. 1907; re-en. Sec. 9468, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 727; re-en. Sec. 9468, R.C.M. 1935; R.C.M. 1947, 93-6002.

71-1-226. Proceedings when debt secured falls due at different times. If the debt for which the mortgage, lien, or encumbrance is held is not all due, as soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterward, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

History: En. Sec. 248, p. 186, L. 1867; re-en. Sec. 297, p. 92, Cod. Stat. 1871; re-en. Sec. 348, p. 136, L. 1877; re-en. Sec. 348, 1st Div. Rev. Stat. 1879; re-en. Sec. 360, 1st Div. Comp. Stat. 1887; re-en. Sec. 1292, C. Civ. Proc. 1895; re-en. Sec. 6863, Rev. C. 1907; re-en. Sec. 9469, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 728; re-en. Sec. 9469, R.C.M. 1935; R.C.M. 1947, 93-6003.

Cross-References

Waste prohibited, 71-1-106.

71-1-227. Injunction to prevent injury to property. The court may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References

Waste prohibited, 71-1-106.

71-1-228. Rights of redemption applicable. All of the rights, powers, and privileges concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana".

History: En. Sec. 2, Ch. 165, L. 1917; re-en. Sec. 9472, R.C.M. 1921; re-en. Sec. 9472, R.C.M. 1935; amd. Sec. 19, Ch. 177, L. 1963; R.C.M. 1947, 93-6006.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

71-1-229. Possession of lands prior to foreclosure upon default and during period of redemption. The purchaser of lands at mortgage foreclosure is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while the execution debtor personally occupies the land as a home for himself and his family. It is unlawful to insert in any mortgage of real estate any provision intended to constitute a waiver by the owner of real estate personally occupying land as a home for himself and family of the provision of this section or any provision intended to give the mortgagee possession of the land or premises prior to foreclosure upon default of tax, principal, or interest payments. The intention hereof is to insure to such owner the possession of his land prior to foreclosure and during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part); amd. Sec. 2, Ch. 11, L. 1979.

Cross-References

Mortgage not a conveyance, 71-1-202.

Definition of foreclosure, 71-1-221.

71-1-230. Action to redeem mortgage. An action to redeem a mortgage of real property, with or without an account of rents and profits, may be brought by the mortgagor or those claiming under him against the mortgagee in possession or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises for 10 years after breach of some condition of the mortgage.

History: En. Sec. 521, C. Civ. Proc. 1895; re-en. Sec. 6454, Rev. C. 1907; re-en. Sec. 9044, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 346; re-en. Sec. 9044, R.C.M. 1935; R.C.M. 1947, 93-2616.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Mortgagee not entitled to possession, 71-1-105.

71-1-231. Redemption by multiple mortgagors. If there is more than one such mortgagor or more than one person claiming under a mortgagor, some of whom are not entitled to maintain such an action under the provisions of 71-1-230 or Title 27, chapter 2, any one of them who is entitled to maintain such an action may redeem therein a divided or undivided part of the mortgaged premises, according as his interest may appear, and have an accounting for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money bearing the same proportion to the whole of such money as the value of his divided or undivided interest in the premises bears to the whole of such premises.

History: En. Sec. 522, C. Civ. Proc. 1895; re-en. Sec. 6455, Rev. C. 1907; re-en. Sec. 9045, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 347; re-en. Sec. 9045, R.C.M. 1935; R.C.M. 1947, 93-2617.

Cross-References

Redemption of real property, Title 25, ch. 13, part 8.

Proceedings when debt secured falls due at different times, 71-1-226.

71-1-232. Deficiency judgment not allowed on foreclosure of purchase price mortgage. Upon the foreclosure of any mortgage, executed to any vendor of real property or to his heirs, executors, administrators, or assigns for the balance of the purchase price of such real property, the mortgagee shall not be entitled to a deficiency judgment on account of such mortgage or note or obligation secured by the same.

History: En. Sec. 1, Ch. 2, L. 1935; re-en. Sec. 9473.1, R.C.M. 1935; R.C.M. 1947, 93-6008.

Cross-References

Proceedings in foreclosure suits, 71-1-222.

Deficiency judgment not allowed under Small Tract Financing Act of Montana, 71-1-317.

Priority of purchase money mortgage, 71-3-114.

71-1-233. Attorney's fee on foreclosure. In an action to foreclose a mortgage of real property, the court must allow as a part of the costs a reasonable attorney's fee, which shall be fixed by the court, any stipulation in the instrument or any agreement between the parties to the contrary notwithstanding.

History: En. Sec. 1862, C. Civ. Proc. 1895; re-en. Sec. 7165, Rev. C. 1907; re-en. Sec. 9798, R.C.M. 1921; re-en. Sec. 9798, R.C.M. 1935; amd. Sec. 11-169, Ch. 264, L. 1963; R.C.M. 1947, 93-8613(part).

Cross-References

Inclusion of attorney's fees in bill of costs, 25-10-302.

Proceedings in foreclosure suits, 71-1-222.

71-1-234. Attorney's fee — petition and notice. If the mortgagee shall demand attorneys' fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the "Small Tract Financing Act of Montana", he shall petition the district court of the county in which said real estate or any part thereof may be situated to fix the amount of such attorney's fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold or such of them as may be found within the state, which copy of said petition must be served at least 10 days before the day fixed for hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served. Such petition shall be acted upon by the district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given.

History: En. Sec. 3, Ch. 165, L. 1917; re-en. Sec. 9473, R.C.M. 1921; re-en. Sec. 9473, R.C.M. 1935; amd. Sec. 20, Ch. 177, L. 1963; R.C.M. 1947, 93-6007.

71-1-235. Instruments — negotiability and remedies. Nothing in this part shall be deemed to affect the negotiability of an instrument, and nothing in this part shall be deemed to limit remedies otherwise available to the purchaser of a promissory note secured by a mortgage unless such purchaser at the time of purchase had notice that the note was so secured.

History: En. 93-6010 by Sec. 11-168, Ch. 264, L. 1963; R.C.M. 1947, 93-6010.

Cross-References

When promise or order unconditional, 30-3-105.

Part 3

Small Tract Financing

71-1-301. Short title. This part may be cited as the "Small Tract Financing Act of Montana".

History: En. Sec. 1, Ch. 177, L. 1963; R.C.M. 1947, 52-401.

71-1-302. Policy. Because the financing of homes and business expansion is essential to the development of the state of Montana and because financing of homes and business expansion, usually involving areas of real estate of not more than 30 acres, has been restricted by the laws relating to mortgages of real property and because more financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than 30 acres as provided in this part.

History: En. Sec. 2, Ch. 177, L. 1963; amd. Sec. 1, Ch. 337, L. 1974; R.C.M. 1947, 52-402; amd. Sec. 1, Ch. 114, L. 1989.

71-1-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or his successor in interest, and who shall not be the trustee.

(2) "Thirty acres" means 30 acres of land.

(3) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(4) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(5) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or his successor in interest.

History: En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; R.C.M. 1947, 52-403(part); amd. Sec. 2, Ch. 114, L. 1989.

71-1-304. Trust indentures authorized — power of sale for breach in trustee. (1) Transfers in trust of any interest in real property of an area not exceeding 30 acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary provided that it is unlawful to substitute a trust indenture for any mortgage in existence on March 5, 1963.

(2) Where any transfer in trust of any interest in real property is made to secure the performance of the obligation referred to in subsection (1), a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which the transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner provided in this part or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision in the trust indenture.

(4) Where the trust indenture states that the real property involved does not exceed 30 acres, the statement is binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale.

History: (1) thru (3)En. Sec. 4, Ch. 177, L. 1963; amd. Sec. 3, Ch. 337, L. 1974; Sec. 52-404, R.C.M. 1947; (4)En. Sec. 3, Ch. 177, L. 1963; amd. Sec. 2, Ch. 337, L. 1974; Sec. 52-403, R.C.M. 1947; R.C.M. 1947, 52-403(part), 52-404; amd. Sec. 3, Ch. 114, L. 1989.

71-1-305. Trust indenture considered to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this part, in which event the provisions of this part shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963; R.C.M. 1947, 52-417.

71-1-306. Qualifications of trustee — successor trustee. (1) The trustee of a trust indenture under this part shall be:

(a) an attorney who is licensed to practice law in Montana;

(b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) a title insurer or title insurance agent or agency authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963; R.C.M. 1947, 52-405; amd. Sec. 1, Ch. 33, L. 1987.

Cross-References

Trust code, Title 72, ch. 33 through 36.

71-1-307. Reconveyance upon performance — liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee, upon written request of the beneficiary, shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963; R.C.M. 1947, 52-406.

Cross-References

Penalties for failure to give certificate of discharge or release after full performance, 71-1-212.

71-1-308 through 71-1-310 reserved.

71-1-311. Time for foreclosure same as mortgage. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963; R.C.M. 1947, 52-407.

Cross-References

Period of mortgage — renewal, 71-1-210.

71-1-312. Discontinuance of foreclosure proceedings when entire amount of default paid. (1) Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred and thereby cure the default theretofore existing.

(2) Thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred.

(3) If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary or his assignee shall, on demand of any person having an interest in the trust property, execute, acknowledge, and deliver to him a request that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of sale under such trust indenture.

(4) Any beneficiary under a trust indenture or his assignee who, for a period of 30 days after such demand, refuses to request the trustee to execute, acknowledge, and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal.

(5) A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded, and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963; R.C.M. 1947, 52-412.

71-1-313. Conditions for foreclosure by advertisement and sale. The trustee may foreclose a trust indenture by advertisement and sale under this part if:

(1) the trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture or some part thereof is situated;

(2) there is a default by the grantor or other person owing an obligation or by their successors in interest, the performance of which is secured by the trust indenture, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(3) the trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture or some part thereof is situated a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(a) the names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(b) a description of the property covered by the trust indenture;

(c) the book and page of the mortgage records where the trust indenture is recorded;

(d) the default for which the foreclosure is made;

(e) the sum owing on the obligation secured by the trust indenture;

(f) the trustee's or beneficiary's election to sell the property to satisfy the obligation;

(g) the date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9 a.m. and 4 p.m., mountain standard time;

(h) the place of sale which shall be at the courthouse of the county or one of the counties where the property is situated or at the location of the property or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

History: En. Sec. 8, Ch. 177, L. 1963; R.C.M. 1947, 52-408(1).

71-1-314. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in 71-1-315(1) may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross-reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963; R.C.M. 1947, 52-415.

71-1-315. Notice — sale — payment. A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided:

(1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) the grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property or some part thereof is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least three public places in each county in which the property or some part thereof is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be recorded in the office of the clerk and recorder of each county where the property or some part thereof is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section.

(3) On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given. In the event a sale cannot be held at the scheduled time by reason of the automatic stay provision of the United States Bankruptcy Code, 11 U.S.C. 362, or of a stay order issued by any court of competent jurisdiction, the person making the sale may, as often as he considers expedient, postpone the sale. Each postponement may not exceed 30 days, and all postponements, in the aggregate, may not exceed 120 days. Each postponement must be effected by a public proclamation at the time and place fixed in the notice of sale or fixed by previous postponement. No other notice of the postponed sale need be given.

(4) The purchaser at the sale shall pay the price bid in cash, and upon receipt of payment, the trustee shall execute and deliver a trustee's deed to

the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to resell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: Ap. p. Sec. 8, Ch. 177, L. 1963; Sec. 52-408, R.C.M. 1947; (1) thru (4)En. Sec. 9, Ch. 177, L. 1963; amd. Sec. 1, Ch. 53, L. 1977; Sec. 52-409, R.C.M. 1947; R.C.M. 1947, 52-408(2), 52-409; amd. Sec. 1, Ch. 55, L. 1983; amd. Sec. 1, Ch. 212, L. 1991.

Compiler's Comments

1991 Amendment: In (3) inserted fifth through eighth sentences regarding procedure for postponement due to automatic or court-ordered stay.

71-1-316. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) to the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) to the obligation secured by the trust indenture;

(3) the surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963; R.C.M. 1947, 52-413.

71-1-317. Deficiency judgment not allowed. When a trust indenture executed in conformity with this part is foreclosed by advertisement and sale, no other or further action, suit, or proceedings shall be taken or judgment entered for any deficiency against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond, or other obligation secured by the trust indenture or against any other person obligated on such note, bond, or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963; R.C.M. 1947, 52-414.

Cross-References

Deficiency judgment not allowed on foreclosure of purchase money mortgage, 71-1-232.

71-1-318. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this part relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under 71-1-315(2) shall be prima facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the grantor and his successors in interest and of all persons claiming by, through, or under them in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963; R.C.M. 1947, 52-410.

71-1-319. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the 10th day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963; R.C.M. 1947, 52-411.

71-1-320. Trustees' fees and attorneys' fees. Reasonable trustees' fees and attorneys' fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of 71-1-312, the reasonable trustees' fees and attorneys' fees to be charged to the grantor shall not exceed the lesser of $1,000 or 1% of the amount due on the obligation, both principal and interest, at the time of default. In no event shall trustees' fees and attorneys' fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963; R.C.M. 1947, 52-416; amd. Sec. 2, Ch. 55, L. 1983.

71-1-321. Deeds of trust and trust deeds not invalidated. The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust, trust deeds, or trust indentures, which are not executed in conformity with this part, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

History: En. Sec. 1, Ch. 362, L. 1979.

CHAPTER 2

PLEDGES

Part 1 — Pledges in General

71-2-101. Definitions.
71-2-102. When contract considered a pledge.

71-2-103. Delivery required.
71-2-104. Pledgee or pledge holder for reward.
71-2-105. Gratuitous pledge holder.
71-2-106. Obligations of pledge holder.
71-2-107. Property pledged to extent of lien.
71-2-108. When pledge may not be withdrawn.
71-2-109. When real owner cannot defeat pledge.
71-2-110. Debtor's misrepresentation of value of pledge.

Chapter Cross-References

"Entrusting" under U.C.C., 30-2-403.

Part 1

Pledges in General

71-2-101. Definitions. (1) "Pledge" is a deposit of personal property by way of security for the performance of another's act.

(2) A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a "pledge holder".

History: (1)En. Sec. 3890, Civ. C. 1895; re-en. Sec. 5774, Rev. C. 1907; re-en. Sec. 8292, R.C.M. 1921; Cal. Civ. C. Sec. 2986; Field Civ. C. Sec. 1647; re-en. Sec. 8292, R.C.M. 1935; Sec. 65-101, R.C.M. 1947; (2)En. Sec. 3897, Civ. C. 1895; re-en. Sec. 5781, Rev. C. 1907; re-en. Sec. 8299, R.C.M. 1921; Cal. Civ. C. Sec. 2993; Field Civ. C. Sec. 1654; re-en. Sec. 8299, R.C.M. 1935; Sec. 65-108, R.C.M. 1947; R.C.M. 1947, 65-101, 65-108.

71-2-102. When contract considered a pledge. Every contract by which the possession of personal property is transferred as security only is to be deemed a pledge.

History: En. Sec. 3891, Civ. C. 1895; re-en. Sec. 5775, Rev. C. 1907; re-en. Sec. 8293, R.C.M. 1921; Cal. Civ. C. Sec. 2987; Field Civ. C. Sec. 1648; re-en. Sec. 8293, R.C.M. 1935; R.C.M. 1947, 65-102.

71-2-103. Delivery required. The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder, as hereafter prescribed.

History: En. Sec. 3892, Civ. C. 1895; re-en. Sec. 5776, Rev. C. 1907; re-en. Sec. 8294, R.C.M. 1921; Cal. Civ. C. Sec. 2988; Field Civ. C. Sec. 1649; re-en. Sec. 8294, R.C.M. 1935; R.C.M. 1947, 65-103.

71-2-104. Pledgee or pledge holder for reward. A pledgee or a pledge holder for reward assumes the duties and liabilities of a depositary for reward.

History: En. Sec. 3901, Civ. C. 1895; re-en. Sec. 5785, Rev. C. 1907; re-en. Sec. 8303, R.C.M. 1921; Cal. Civ. C. Sec. 2997; Field Civ. C. Sec. 1658; re-en. Sec. 8303, R.C.M. 1935; R.C.M. 1947, 65-112.

Cross-References

Custody of thing other than money, 28-1-1224.

71-2-105. Gratuitous pledge holder. A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

History: En. Sec. 3902, Civ. C. 1895; re-en. Sec. 5786, Rev. C. 1907; re-en. Sec. 8304, R.C.M. 1921; Cal. Civ. C. Sec. 2998; Field Civ. C. Sec. 1659; re-en. Sec. 8304, R.C.M. 1935; R.C.M. 1947, 65-113.

71-2-106. Obligations of pledge holder. (1) A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

(2) A pledge holder must enforce all the rights of the pledgee unless authorized by him to waive them.

History: (1)En. Sec. 3899, Civ. C. 1895; re-en. Sec. 5783, Rev. C. 1907; re-en. Sec. 8301, R.C.M. 1921; Cal. Civ. C. Sec. 2995; Field Civ. C. Sec. 1656; re-en. Sec. 8301, R.C.M. 1935; Sec. 65-110, R.C.M. 1947; (2)En. Sec. 3900, Civ. C. 1895; re-en. Sec. 5784, Rev. C. 1907; re-en. Sec. 8302, R.C.M. 1921; Cal. Civ. C. Sec. 2996; Field Civ. C. Sec. 1657; re-en. Sec. 8302, R.C.M. 1935; Sec. 65-111, R.C.M. 1947; R.C.M. 1947, 65-110, 65-111.

71-2-107. Property pledged to extent of lien. One who has a lien upon property may pledge it to the extent of his lien.

History: En. Sec. 3894, Civ. C. 1895; re-en. Sec. 5778, Rev. C. 1907; re-en. Sec. 8296, R.C.M. 1921; Cal. Civ. C. Sec. 2990; Field Civ. C. Sec. 1651; re-en. Sec. 8296, R.C.M. 1935; R.C.M. 1947, 65-105.

71-2-108. When pledge may not be withdrawn. One who pledges property as security for the obligation of another cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

History: En. Sec. 3898, Civ. C. 1895; re-en. Sec. 5782, Rev. C. 1907; re-en. Sec. 8300, R.C.M. 1921; Cal. Civ. C. Sec. 2994; Field Civ. C. Sec. 1655; re-en. Sec. 8300, R.C.M. 1935; R.C.M. 1947, 65-109.

71-2-109. When real owner cannot defeat pledge. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it cannot set up his own title to defeat a pledge of the property made by the other to a pledgee who received the property in good faith in the ordinary course of business and for value.

History: En. Sec. 3895, Civ. C. 1895; re-en. Sec. 5779, Rev. C. 1907; re-en. Sec. 8297, R.C.M. 1921; Cal. Civ. C. Sec. 2991; Field Civ. C. Sec. 1652; re-en. Sec. 8297, R.C.M. 1935; R.C.M. 1947, 65-106.

71-2-110. Debtor's misrepresentation of value of pledge. Where a debtor has obtained credit or an extension of time by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented and in default thereof may recover his debt immediately, though it be not actually due.

History: En. Sec. 3903, Civ. C. 1895; re-en. Sec. 5787, Rev. C. 1907; re-en. Sec. 8305, R.C.M. 1921; Cal. Civ. C. Sec. 2999; Field Civ. C. Sec. 1660; re-en. Sec. 8305, R.C.M. 1935; R.C.M. 1947, 65-114.

CHAPTER 3

LIENS

Part 1 — General Provisions

71-3-101. Definitions.
71-3-102. How liens created.
71-3-103. No lien for claim not due.
71-3-104. Lien by agreement.
71-3-105. Lien on future interest.
71-3-106. Extent of lien.
71-3-107. Prior liens.
71-3-108. Lien or contract for lien transfers no title.
71-3-109. Certain contracts void.
71-3-110. Enforcement of obligation by creditor.
71-3-111. Creation of lien not a personal obligation.
71-3-112. Holder of lien not entitled to compensation.
71-3-113. Priority of liens.
71-3-114. Priority of purchase money mortgage.
71-3-115. Order of resort to different funds.
71-3-116. Redemption.
71-3-117. Right to redeem.
71-3-118. Rights of inferior lienor.
71-3-119. Lien accessory to performance.
71-3-120. Effect of partial performance.
71-3-121. Extinction by sale or wrongful conversion.
71-3-122. Lien extinguished by statute of limitations.
71-3-123. When restoration extinguishes lien.
71-3-124. Filing costs and attorneys' fees to be recovered on foreclosure of liens.
71-3-125. Filing of agricultural lien statements.
71-3-126 through 71-3-130 reserved.
71-3-131. Acknowledgment of lien satisfaction — penalty.

Part 2 — Federal Tax Liens

71-3-201. Short title.
71-3-202. Uniformity of interpretation.
71-3-203. Execution of notices and certificates.
71-3-204. Federal liens — place of filing.
71-3-205. Duties of filing officer.
71-3-206. Fees.
71-3-207. Prior filings of tax liens and notices.

Part 3 — Liens for Salaries and Wages

71-3-301. Priority when assignment of property made.
71-3-302. Priority in case of death of employer.
71-3-303. Priority in cases of execution or attachment.
71-3-304. Service of notice.
71-3-305. Proceeding if claim disputed.
71-3-306. Preferred claims — no dismissal of original action without consent.
71-3-307. Liens not affected prior to four months of claim.

Part 4 — Farm Laborers' Liens

71-3-401. Who may have lien — priority.
71-3-402. How lien obtained.
71-3-403. Repealed.

71-3-404. Notice to other lienholders.
71-3-405. Limitations of actions to foreclose liens.
71-3-406. Rules of practice.
71-3-407. Parties.
71-3-408. Acknowledgment of satisfaction of lien — penalty.

Part 5 — Construction Liens

71-3-501. Repealed.
71-3-502. Repealed.
71-3-503. Repealed.
71-3-504. Renumbered 71-3-561 by Code Commissioner, 1987.
71-3-505. Renumbered 71-3-562 by Code Commissioner, 1987.
71-3-506 through 71-3-510 reserved.
71-3-511. Repealed.
71-3-512. Renumbered 71-3-533 by Code Commissioner, 1987.
71-3-513. Renumbered 71-3-534 by Code Commissioner, 1987.
71-3-514. Repealed.
71-3-515. Renumbered 71-3-537 by Code Commissioner, 1987.
71-3-516. Renumbered 71-3-551 by Code Commissioner, 1987.
71-3-517. Renumbered 71-3-552 by Code Commissioner, 1987.
71-3-518. Renumbered 71-3-553 by Code Commissioner, 1987.
71-3-519. Renumbered 71-3-563 by Code Commissioner, 1987.
71-3-520 reserved.
71-3-521. Scope.
71-3-522. Definitions.
71-3-523. Who may claim a construction lien — limitation.
71-3-524. Limitation of lien for materials supplied.
71-3-525. Extent of lien.
71-3-526. Amount of lien.
71-3-527 through 71-3-530 reserved.
71-3-531. Notice of right to claim lien required — exceptions.
71-3-532. Content of notice of right to claim lien.
71-3-533. Notice of completion.
71-3-534. Filing with county clerk — notification of owner.
71-3-535. Attachment of lien — filing.
71-3-536. Content of lien notice.
71-3-537. Acknowledgment of satisfaction of lien — penalty.
71-3-538 through 71-3-540 reserved.
71-3-541. Priority among holders of construction liens.
71-3-542. Priority of construction liens as against claims other than construction lien claims.
71-3-543 through 71-3-550 reserved.
71-3-551. Substitution of bond allowed — filing — amount — condition.
71-3-552. Lien discharged upon filing of bond.
71-3-553. Action upon bond — period of limitation same.
71-3-554 through 71-3-560 reserved.
71-3-561. Parties.
71-3-562. Limitation on actions.
71-3-563. Rules of practice.

Part 6 — Loggers' Liens

71-3-601. Definition of lumber — who may have lien.
71-3-602. Priority.
71-3-603. Extent of liens.
71-3-604. Duration of lien.
71-3-605. How to obtain lien — form of claim.
71-3-606. Claim for lien of landowner same.
71-3-607. Immaterial defects in claim.
71-3-608. Duties of county clerk.
71-3-609 and 71-3-610 reserved.
71-3-611. Enforcement of lien.

71-3-612. Requirements to be bona fide purchaser.
71-3-613. Parties.
71-3-614. Judgment and execution.
71-3-615. Sale of property to satisfy lien.
71-3-616. Penalty for destroying means of identification of property.

Part 7 — Crop Liens for Seed or Grain and Liens for Hail Insurance

71-3-701. Lien for seed or grain.
71-3-702. Priority.
71-3-703. How to obtain lien.
71-3-704. Acknowledgment of satisfaction of lien — penalty.
71-3-705. Destruction of records — when allowed.
71-3-706 through 71-3-710 reserved.
71-3-711. Lien for hail insurance.
71-3-712. How lien obtained.
71-3-713. Acknowledgment of satisfaction of lien — penalty.

Part 8 — Threshers' Liens

71-3-801. Who may have lien — amount.
71-3-802. How lien obtained.
71-3-803. Repealed.
71-3-804. Priority.
71-3-805. Who considered owners.
71-3-806. Parties.
71-3-807. Limitations of actions.
71-3-808. Acknowledgment of satisfaction of lien — penalty.
71-3-809. Rules of practice.
71-3-810. Destruction of records — when allowed.

Part 9 — Crop or Grain Liens for Spraying or Dusting

71-3-901. Who may have lien — amount.
71-3-902. How lien obtained.
71-3-903. Repealed.
71-3-904. Priority.
71-3-905. Who considered owners.
71-3-906. Parties.
71-3-907. Limitations of actions.
71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty.
71-3-909. Rules of practice.

Part 10 — Labor and Material Liens on Oil and Gas Wells and Pipelines

71-3-1001. Definitions.
71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines.
71-3-1003. Lien for labor or supplies furnished for contractor.
71-3-1004. How lien perfected.
71-3-1005. Enforcement of liens — duty of county clerks.
71-3-1006. Date lien arises.
71-3-1007. Priority.
71-3-1008. Lien for running account as single contract.
71-3-1009. Liability fixed.
71-3-1010. Removal of property covered by lien prohibited — effect of wrongful removal.
71-3-1011. Notice to purchaser of oil and gas.
71-3-1012. Effect on interest which is less than fee interest.

Part 11 — Liens of Physicians, Nurses, Physical Therapists, Occupational Therapists, Chiropractors, Dentists, and Hospitals in Personal Injury Claims

71-3-1101 through 71-3-1105. Repealed.
71-3-1106 through 71-3-1110 reserved.
71-3-1111. Short title.
71-3-1112. Purpose.
71-3-1113. Definitions.
71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals.
71-3-1115. Notice of lien.
71-3-1116. Notice of lien — filing with clerk of court.
71-3-1117. Liability for failure to recognize lien.
71-3-1118. Applicability.

Part 12 — Agisters' Liens and Liens for Service

71-3-1201. Who may have lien.
71-3-1202. Priority.
71-3-1203. Enforcement of lien — sale.
71-3-1204. Lien not lost by fraudulent taking of property.

Part 13 — Liens on Real Estate

71-3-1301. Lien of seller of real property — waiver.
71-3-1302. Purchaser's lien on real property.
71-3-1303. Extent of liens.

Part 14 — Hotel Liens

71-3-1401. Lien of hotelkeepers.
71-3-1402. Enforcement of lien.
71-3-1403. Notice of sale.

Part 15 — Miscellaneous Liens

71-3-1501. Lien of factor.
71-3-1502. Banker's lien.
71-3-1503. Officer's lien.
71-3-1504. Judgment lien.
71-3-1505. Lien for rental on frozen food compartments.

Part 1

General Provisions

71-3-101. Definitions. (1) A "lien" is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act. Liens are either general or special.

(2) A "general lien" is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations or all of a particular class of obligations which exist in his favor against the owner of the property.

(3) A "special lien" is one which the holder thereof can enforce only as security for the performance of a particular act or obligation and of such obligations as may be incidental thereto.

History: **(1)Ap. p. Sec. 3730, Civ. C. 1895; re-en. Sec. 5704, Rev. C. 1907; re-en. Sec. 8219, R.C.M. 1921; Cal. Civ. C. Sec. 2872; Based on Field Civ. C. Sec. 1582; re-en. Sec. 8219, R.C.M. 1935; Sec. 45-101, R.C.M. 1947; Ap. p. Sec. 3731, Civ. C. 1895; re-en. Sec. 5705, Rev. C. 1907; re-en. Sec. 8220, R.C.M. 1921; Cal. Civ. C. Sec. 2873; Field Civ. C. Sec. 1583; re-en. Sec. 8220, R.C.M. 1935; Sec. 45-102, R.C.M. 1947; (2)En. Sec. 3732, Civ. C. 1895; re-en. Sec. 5706, Rev. C. 1907; re-en. Sec. 8221, R.C.M. 1921; Cal. Civ. C. Sec. 2874; Field Civ. C. Sec. 1584; re-en. Sec. 8221, R.C.M. 1935; Sec. 45-103, R.C.M. 1947; (3)En. Sec. 3733, Civ. C. 1895; re-en. Sec. 5707, Rev. C. 1907; re-en. Sec. 8222, R.C.M. 1921; Cal. Civ. C. Sec. 2875; Field Civ. C. Sec. 1585; re-en. Sec. 8222, R.C.M. 1935; Sec. 45-104, R.C.M. 1947; R.C.M. 1947, 45-101, 45-102, 45-103, 45-104.**

Cross-References

Lien, when used in reference to security interest in personal property, to include a security interest under ch. 9 of the U.C.C., 1-1-205.

Judgment lien, 25-9-301.

Judgment lien for compensation — attorneys, 37-61-420.

Common carrier — lien on baggage, 69-11-206.

Carrier's lien for freightage, 69-11-410.

Security interest in livestock, Title 81, ch. 8, part 3.

Liens under Housing Act of 1975, 90-6-108.

71-3-102. How liens created. A lien is created:

(1) by contract of the parties; or

(2) by operation of law.

History: **En. Sec. 3740, Civ. C. 1895; re-en. Sec. 5710, Rev. C. 1907; re-en. Sec. 8225, R.C.M. 1921; Cal. Civ. C. Sec. 2881; Field Civ. C. Sec. 1587; re-en. Sec. 8225, R.C.M. 1935; R.C.M. 1947, 45-107.**

71-3-103. No lien for claim not due. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

History: **En. Sec. 3741, Civ. C. 1895; re-en. Sec. 5711, Rev. C. 1907; re-en. Sec. 8226, R.C.M. 1921; Cal. Civ. C. Sec. 2882; Field Civ. C. Sec. 1588; re-en. Sec. 8226, R.C.M. 1935; R.C.M. 1947, 45-108.**

71-3-104. Lien by agreement. A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

History: **En. Sec. 3743, Civ. C. 1895; re-en. Sec. 5713, Rev. C. 1907; re-en. Sec. 8228, R.C.M. 1921; Cal. Civ. C. Sec. 2884; Field Civ. C. Sec. 1590; re-en. Sec. 8228, R.C.M. 1935; R.C.M. 1947, 45-110.**

71-3-105. Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

History: **En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R.C.M. 1921; Cal. Civ. C. Sec. 2883; Field Civ. C. Sec. 1589; re-en. Sec. 8227, R.C.M. 1935; amd. Sec. 11-118, Ch. 264, L. 1963; R.C.M. 1947, 45-109.**

Cross-References

When after-acquired collateral not security for antecedent debt, 30-9-108.

When security interest attaches — after-acquired property — future advances, 30-9-204.

Future advances subject to mortgage protection, 71-1-206.

71-3-106. Extent of lien. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

History: En. Sec. 3753, Civ. C. 1895; re-en. Sec. 5717, Rev. C. 1907; re-en. Sec. 8232, R.C.M. 1921; Cal. Civ. C. Sec. 2891; Field Civ. C. Sec. 1594; re-en. Sec. 8232, R.C.M. 1935; R.C.M. 1947, 45-114.

71-3-107. Prior liens. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him as a part of the claim for which his own lien exists.

History: En. Sec. 3734, Civ. C. 1895; re-en. Sec. 5708, Rev. C. 1907; re-en. Sec. 8223, R.C.M. 1921; Cal. Civ. C. Sec. 2876; re-en. Sec. 8223, R.c.M. 1935; R.C.M. 1947, 45-105.

71-3-108. Lien or contract for lien transfers no title. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

History: En. Sec. 3750, Civ. C. 1895; re-en. Sec. 5714, Rev. C. 1907; re-en. Sec. 8229, R.C.M. 1921; Cal. Civ. C. Sec. 2888; Field Civ. C. Sec. 1591; re-en. Sec. 8229, R.C.M. 1935; R.C.M. 1947, 45-111.

71-3-109. Certain contracts void. Except as otherwise provided by the Uniform Commercial Code, all contracts for the forfeiture of property subject to a lien in satisfaction of the obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void.

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R.C.M. 1921; Cal. Civ. C. Sec. 2889; Based on Field Civ. C. Sec. 1592; re-en. Sec. 8230, R.C.M. 1935; amd. Sec. 11-119, Ch. 264, L. 1963; R.C.M. 1947, 45-112.

Cross-References

Debtor's right to redeem collateral, 30-9-506.

71-3-110. Enforcement of obligation by creditor. The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

History: En. Sec. 3754, Civ. C. 1895; re-en. Sec. 5718, Rev. C. 1907; re-en. Sec. 8233, R.C.M. 1921; Field Civ. C. Sec. 1595; re-en. Sec. 8233, R.C.M. 1935; R.C.M. 1947, 45-115.

Cross-References

Proceedings in foreclosure suits — exclusive action, 71-1-222.

71-3-111. Creation of lien not a personal obligation. The creation of a lien does not itself imply that any person is bound to perform the act for which the lien is a security.

History: En. Sec. 3752, Civ. C. 1895; re-en. Sec. 5716, Rev. C. 1907; re-en. Sec. 8231, R.C.M. 1921; Cal. Civ. C. Sec. 2890; Field Civ. C. Sec. 1593; re-en. Sec. 8231, R.C.M. 1935; R.C.M. 1947, 45-113.

71-3-112. Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code, one who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower under 70-7-110 and 70-7-111.

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R.C.M. 1921; Cal. Civ. C. Sec. 2892; Field Civ. C. Sec. 1596; re-en. Sec. 8234, R.C.M. 1935; amd. Sec. 11-120, Ch. 264, L. 1963; R.C.M. 1947, 45-116.

Cross-References

Rights and duties when collateral is in secured party's possession, 30-9-207.

71-3-113. Priority of liens. Other things being equal, different liens upon the same property have priority according to the time of their creation.

History: En. Sec. 3770, Civ. C. 1895; re-en. Sec. 5720, Rev. C. 1907; re-en. Sec. 8235, R.C.M. 1921; Cal. Civ. C. Sec. 2897; Based on Field Civ. C. Sec. 1597; re-en. Sec. 8235, R.C.M. 1935; R.C.M. 1947, 45-201.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — liens for spraying or dusting, 71-3-904.

Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-114. Priority of purchase money mortgage. Except as otherwise provided by law, a mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

History: En. Sec. 3771, Civ. C. 1895; re-en. Sec. 5721, Rev. C. 1907; re-en. Sec. 8236, R.C.M. 1921; Cal. Civ. C. Sec. 2898; re-en. Sec. 8236, R.C.M. 1935; R.C.M. 1947, 45-202.

Cross-References

Deficiency judgment not allowed on foreclosure of purchase price mortgage, 71-1-232.

71-3-115. Order of resort to different funds. Where one has a lien upon several things and other persons have subordinate liens upon or interests in some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

(1) to the things upon which he has an exclusive lien;

(2) to the things which are subject to the fewest subordinate liens;

(3) in like manner inversely to the number of subordinate liens upon the same thing; and

(4) when several things are within one of the foregoing classes and subject to the same number of liens, resort must be had:

(a) first, to the things which have not been transferred since the prior lien was created;

(b) second, to the things which have been so transferred without a valuable consideration; and

(c) third, to the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

History: En. Sec. 3772, Civ. C. 1895; re-en. Sec. 5722, Rev. C. 1907; re-en. Sec. 8237, R.C.M. 1921; Cal. Civ. C. Sec. 2899; Based on Field Civ. C. Sec. 1599; re-en. Sec. 8237, R.C.M. 1935; R.C.M. 1947, 45-203.

71-3-116. Redemption. Redemption from a lien is made by performing or offering to perform the act for the performance of which it is a security and paying or offering to pay the damages, if any, to which the holder of the lien is entitled for delay.

History: En. Sec. 3782, Civ. C. 1895; re-en. Sec. 5725, Rev. C. 1907; re-en. Sec. 8240, R.C.M. 1921; Cal. Civ. C. Sec. 2905; Field Civ. C. Sec. 1602; re-en. Sec. 8240, R.C.M. 1935; R.C.M. 1947, 45-303.

71-3-117. Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person having an interest in property subject to a lien has a right to redeem it from the lien at any time after the claim is due and before his right of redemption is foreclosed.

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R.C.M. 1921; Cal. Civ. C. Sec. 2903; re-en. Sec. 8238, R.C.M. 1935; amd. Sec. 11-121, Ch. 264, L. 1963; R.C.M. 1947, 45-301.

71-3-118. Rights of inferior lienor. One who has a lien inferior to another upon the same property has a right to:

(1) redeem the property in the same manner as its owner might from the superior lien; and

(2) be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

History: En. Sec. 3781, Civ. C. 1895; re-en. Sec. 5724, Rev. C. 1907; re-en. Sec. 8239, R.C.M. 1921; Cal. Civ. C. Sec. 2904; Field Civ. C. Sec. 1601; re-en. Sec. 8239, R.C.M. 1935; R.C.M. 1947, 45-302.

71-3-119. Lien accessory to performance. A lien is to be accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

History: En. Sec. 3790, Civ. C. 1895; re-en. Sec. 5726, Rev. C. 1907; re-en. Sec. 8241, R.C.M. 1921; Cal. Civ. C. Sec. 2909; re-en. Sec. 8241, R.C.M. 1935; R.C.M. 1947, 45-304.

71-3-120. Effect of partial performance. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

History: En. Sec. 3793, Civ. C. 1895; re-en. Sec. 5729, Rev. C. 1907; re-en. Sec. 8244, R.C.M. 1921; Cal. Civ. C. Sec. 2912; Field Civ. C. Sec. 1606; re-en. Sec. 8244, R.C.M. 1935; R.C.M. 1947, 45-307.

71-3-121. Extinction by sale or wrongful conversion. The sale of any property on which there is a lien in satisfaction of the claim secured thereby or, in case of personal property, its wrongful conversion by the person holding the lien extinguishes the lien thereon.

History: En. Sec. 3791, Civ. C. 1895; re-en. Sec. 5727, Rev. C. 1907; re-en. Sec. 8242, R.C.M. 1921; Cal. Civ. C. Sec. 2910; Field Civ. C. Sec. 1604; re-en. Sec. 8242, R.C.M. 1935; R.C.M. 1947, 45-305.

71-3-122. Lien extinguished by statute of limitations. A lien is extinguished by the lapse of the time within which, under the provisions of Title 27, an action can be brought upon the principal obligation.

History: En. Sec. 3792, Civ. C. 1895; re-en. Sec. 5728, Rev. C. 1907; re-en. Sec. 8243, R.C.M. 1921; Cal. Civ. C. Sec. 2911; Field Civ. C. Sec. 1605; re-en. Sec. 8243, R.C.M. 1935; R.C.M. 1947, 45-306.

Cross-References

Statutes of Limitations, Title 27, ch. 2.

71-3-123. When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code, the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property or a lien thereon in good faith and for a good consideration.

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R.C.M. 1921; Cal. Civ. C. Sec. 2913; Based on Field Civ. C. Sec. 1607; re-en. Sec. 8246, R.C.M. 1935; amd. Sec. 11-122, Ch. 264, L. 1963; R.C.M. 1947, 45-308.

Cross-References

Lien creditor, 30-9-301.

When security interest is perfected — continuity of perfection, 30-9-303.

71-3-124. Filing costs and attorneys' fees to be recovered on foreclosure of liens. In an action to foreclose any of the liens provided for by parts 3, 4, 5, 6, 8, or 10 of this chapter, the court must allow as costs the money paid for filing and recording the lien and a reasonable attorney's fee in the district and supreme courts, and such costs and attorneys' fees must be allowed to each claimant whose lien is established, and such reasonable attorneys' fees must be allowed to the defendant against whose property a lien is claimed, if such lien be not established.

History: Ap. p. Sec. 1863, C. Civ. Proc. 1895; re-en. Sec. 7166, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1921; re-en. Sec. 9799, R.C.M. 1921; amd. Sec. 1, Ch. 69, L. 1925; amd. Sec. 1, Ch. 19, L. 1929; re-en. Sec. 9799, R.C.M. 1935; Sec. 93-8614, R.C.M. 1947; Ap. p. Sec. 1, Ch. 27, L. 1923; re-en. Sec. 9799.1, R.C.M. 1935; Sec. 93-8615, R.C.M. 1947; Ap. p. Sec. 1864, C. Civ. Proc. 1895; re-en. Sec. 7167, Rev. C. 1907; re-en. Sec. 9800, R.C.M. 1921; re-en. Sec. 9800, R.C.M. 1935; Sec. 93-8616, R.C.M. 1947; Ap. p. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; Sec. 45-415, R.C.M. 1947; Ap. p. Sec. 9, Ch. 196, L. 1935; re-en. Sec. 8374.9, R.C.M. 1935; Sec. 45-909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 17, L. 1915; re-en. Sec. 8352, R.C.M. 1921; re-en. Sec. 8352, R.C.M. 1935; Sec. 45-602, R.C.M. 1947; R.C.M. 1947, 45-415(part), 45-602, 45-909, 93-8614, 93-8615, 93-8616.

Cross-References

Inclusion of attorney's fee in bill of cost, 25-10-302.

71-3-125. Filing of agricultural lien statements. (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in 30-1-201(9), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A statement of an agricultural lien is sufficient if it:

(a) gives the names and addresses of the debtor and lienor and the county of residence of the debtor;

(b) describes the type of lien and its statutory authority;

(c) describes the collateral;

(d) contains the notation by the secretary of state of the date of filing and filing number;

(e) is signed by the lienor;

(f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.

(g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;

(h) states the amount remaining unpaid;

(i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;

(j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;

(k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;

(l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and

(m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.

(3) The agricultural lien statement must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

(a) record the agricultural lien statement on the centralized computer system as set forth in 30-9-403; and

(b) establish fees for such recordings as set forth in 30-9-403.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder.

History: En. Sec. 1, Ch. 295, L. 1987; amd. Sec. 1, Ch. 529, L. 1989.

71-3-126 through 71-3-130 reserved.

71-3-131. Acknowledgment of lien satisfaction — penalty. Whenever a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid by final order or judgment of a court of competent jurisdiction, it is the duty of the creditors to acknowledge satisfaction within 30 days and discharge the lien of record by filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, he is liable to any person injured by such failure for a civil penalty of $100, plus any other damages provided by law.

History: En. Sec. 1, Ch. 525, L. 1985.

Cross-References

Indexes to recorded documents, 7-4-2619.

Availability of records, 7-4-2622.

Fees of County Clerk, 7-4-2631.

Part 2

Federal Tax Liens

71-3-201. Short title. This part may be cited as the "Uniform Federal Lien Registration Act".

History: En. Sec. 6, Ch. 228, L. 1967; R.C.M. 1947, 45-1506; amd. Sec. 1, Ch. 396, L. 1983.

71-3-202. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967; R.C.M. 1947, 45-1505.

71-3-203. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any lien, of notices of liens, certificates, or other notices affecting federal liens entitles them to be filed. No other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967; R.C.M. 1947, 45-1502; amd. Sec. 2, Ch. 396, L. 1983.

71-3-204. Federal liens — place of filing. (1) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to the liens is situated.

(2) Notices of liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(a) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(b) if the person against whose interest the lien applies is a trust that is not covered by subsection (2)(a), in the office of the secretary of state;

(c) if the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;

(d) in all other cases, in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967; R.C.M. 1947, 45-1501; amd. Sec. 3, Ch. 396, L. 1983.

71-3-205. Duties of filing officer. (1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) he is the secretary of state, he shall cause the notice to be marked, held, and indexed in accordance with the provisions of 30-9-403(4) as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) he is any other officer described in 71-3-204, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing, he shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates shall not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate, with the date of filing, in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate.

History: En. Sec. 3, Ch. 228, L. 1967; R.C.M. 1947, 45-1503; amd. Sec. 4, Ch. 396, L. 1983; amd. Sec. 3, Ch. 156, L. 1987.

Cross-References

Termination statement, 30-9-404.

Information from filing officer, 30-9-407.

Security agreements and termination statements — when destroyed, 30-9-411.

71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established and deposited in accordance with the provisions of 30-9-403(13).

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967; R.C.M. 1947, 45-1504; amd. Sec. 5, Ch. 396, L. 1983; amd. Sec. 4, Ch. 156, L. 1987; amd. Sec. 74, Ch. 83, L. 1989.

71-3-207. Prior filings of tax liens and notices. Filing officers with whom notices of federal tax liens, certificates, and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967", containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967; R.C.M. 1947, 45-1507.

Part 3

Liens for Salaries and Wages

71-3-301. Priority when assignment of property made. In all assignments of property made by any person to trustees or assignees on account of the inability of the person, at the time of the assignment, to pay his debts or in proceedings of insolvency, the wages of the miners, mechanics, salesmen, servants, clerks, or laborers employed by such person, to the amount actually owed and for services rendered within the previous 4 months, are preferred claims and must be paid by such trustees or assignees before any other creditor of the assignor.

History: En. Sec. 2050, 5th Div. Comp. Stat. 1887; amd. Sec. 2150, C. Civ. Proc. 1895; re-en. Sec. 7302, Rev. C. 1907; re-en. Sec. 8351, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1204; re-en. Sec. 8351, R.C.M. 1935; amd. Sec. 1, Ch. 109, L. 1943; R.C.M. 1947, 45-601.

Cross-References

Priority of certain liens arising by operation of law, 30-9-310.

Priority — crop or grain liens, 71-3-904.

71-3-302. Priority in case of death of employer. In case of the death of any employer, the wages of each miner, mechanic, salesperson, clerk, servant, and laborer for services rendered within 4 months next preceding the death of the employer, in the amount actually owed, are preferred debts under 72-3-807(1)(d) and must be paid before other claims against the estate of the deceased person.

History: En. Sec. 2051, 5th Div. Comp. Stat. 1887; re-en. Sec. 2151, C. Civ. Proc. 1895; re-en. Sec. 7303, Rev. C. 1907; re-en. Sec. 8353, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1205; re-en. Sec. 8353, R.C.M. 1935; amd. Sec. 2, Ch. 109, L. 1943; amd. Sec. 3, Ch. 263,L. 1975; amd. Sec. 25, Ch. 535, L. 1975; R.C.M. 1947, 45-603; amd. Sec. 131, Ch. 370, L. 1987.

Cross-References

Classification of claims against the estate — priority of payment, 72-3-807.

71-3-303. Priority in cases of execution or attachment. In case of executions, attachments, and writs of similar nature issued against any person, except for claims for labor done, any miners, mechanics, salesmen, servants, clerks, or laborers who have claims against the defendant for labor done may give notice of their claims and the amount thereof, sworn to by the person making the claim, to the parties plaintiff and defendant to the action in which such execution, attachment, or other writ has been issued and upon the officer executing the same. Service of notice herein required may be made upon the officer charged with the execution of such writ in one or more cases that may be pending against such person, who shall forthwith serve such notice and claim, by copy, upon the parties plaintiff and defendant, if found in the county where such action is pending, or upon their respective attorneys employed in such case or cases pending.

History: En. Sec. 2052, 5th Div. Comp. Stat. 1887; re-en. Sec. 2152, C. Civ. Proc. 1895; re-en. Sec. 7304, Rev. C. 1907; re-en. Sec. 8354, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1206; re-en. Sec. 8354, R.C.M. 1935; R.C.M. 1947, 45-604.

Cross-References

Priority of certain liens arising by operation of law, 30-9-310.

71-3-304. Service of notice. (1) The officer serving said notice and claim shall forthwith, after service of the same, make return thereof showing such service, where and how made.

(2) Service may be made in any case at any time before the actual sale of the property levied upon in such pending action, and unless such claim is disputed by the debtor or a creditor or party plaintiff, such officer must pay such person out of the proceeds of the sale the amount he is entitled to receive for services rendered within the 4 months next preceding the levy of the writ, not exceeding the amount actually owed.

History: En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; R.C.M. 1947, 45-605(part).

71-3-305. Proceeding if claim disputed. (1) If any or all of the claims so presented and claiming preference under this part are disputed by either the debtor or a creditor, the person presenting the same must commence an action within 10 days after notice of such dispute is served upon such claimant, as provided in subsection (2), for the recovery thereof. The officer must retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim and costs until the final determination of such action. In case judgment be had, the costs are a preferred claim, which may include a reasonable attorney's fee.

(2) The debtor or creditor intending to dispute any claim presented under the provisions of 71-3-303 shall, within 10 days after receiving notice of such claim, serve upon the claimant and officer holding such execution, attachment, or other writ a statement in writing, verified by the oath of the debtor

or person disputing such claim for services, setting forth that no part of said claim, not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the 4 months next preceding the levy of the execution, attachment, or other writ, as the case may be.

(3) If the claimant brings suit on a claim which is disputed in part only and fails to recover a sum exceeding that which was admitted to be due, he shall not recover costs, but costs shall be adjudged against him. Where such claimant fails to bring suit upon his claim, which is disputed in part only, he shall be deemed to have waived that portion of his claim disputed.

History: (1)En. 2052, 5th Div. Comp. Stat. 1887; amd. Sec. 2153, C. Civ. Proc. 1895; re-en. Sec. 7305, Rev. C. 1907; re-en. Sec. 8355, R.C.M. 1921; re-en. Sec. 8355, R.C.M. 1935; amd. Sec. 3, Ch. 109, L. 1943; Sec. 45-605, R.C.M. 1947; (2), (3)En. Sec. 2053, 5th Div. Comp. Stat. 1887; re-en. Sec. 2154, C. Civ. Proc. 1895; re-en. Sec. 7306, Rev. C. 1907; re-en. Sec. 8356, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1207; re-en. Sec. 8356, R.C.M. 1935; amd. Sec. 4, Ch. 109, L. 1943; Sec. 45-606, R.C.M. 1947; R.C.M. 1947, 45-605(part), 45-606.

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Form of ordinary oath, 1-6-102.

Affirmation or declaration in lieu of oath, 1-6-104.

71-3-306. Preferred claims — no dismissal of original action without consent. Persons having the preferred claims mentioned in this part are entitled to a lien upon the property attached or levied upon, and if said claims are not disputed or if a judgment is recovered for the same, the officer must pay such claims out of the property, and the original action cannot be dismissed without the consent of the owners of such preferred claims.

History: En. Sec. 2155, C. Civ. Proc. 1895; re-en. Sec. 7307, Rev. C. 1907; re-en. Sec. 8357, R.C.M. 1921; re-en. Sec. 8357, R.C.M. 1935; R.C.M. 1947, 45-607.

71-3-307. Liens not affected prior to four months of claim. Nothing in this part shall be construed so as to affect any lien, encumbrance, or mortgage held by any creditor of such employer prior to said 4 months.

History: En. Sec. 2054, 5th Div. Comp. Stat. 1887; re-en. Sec. 2156, C. Civ. Proc. 1895; re-en. Sec. 7308, Rev. C. 1907; re-en. Sec. 8358, R.C.M. 1921; re-en. Sec. 8358, R.C.M. 1935; amd. Sec. 5, Ch. 109, L. 1943; R.C.M. 1947, 45-608.

Part 4

Farm Laborers' Liens

71-3-401. Who may have lien — priority. (1) Any person who performs services for another in the capacity of a farm or ranch laborer has a lien on all crops of every kind grown, raised, or harvested by the person for whom the services were performed during that time as security for the payment of any wages due or owing to such persons for services so performed.

(2) The lien has priority over all other liens, chattel mortgages, or encumbrances except feed sufficient for 3 months for 1 horse, 2 cows and their calves, 4 hogs, and 50 domestic fowls and seed grain and threshers' liens. The wages for which a lien may be claimed may not be in excess of $1,000 or for a

period of time exceeding 60 days next preceding the date of filing the lien. In case any such person without cause quits his employment before the expiration of the time for which he is employed, he is not entitled to a lien as herein provided.

(3) If several persons have or obtain liens under the provisions of this part against property of the same employer, they have no priority among themselves but all must be paid pro rata from the proceeds of any foreclosure sale according to the provisions of this part.

History: En. Secs. 1, 4, Ch. 196, L. 1935; re-en. Secs. 8374.1, 8374.4, R.C.M. 1935; R.C.M. 1947, 45-901, 45-904; amd. Sec. 3, Ch. 11, L. 1979.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority of purchase money mortgage, 71-3-114.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — liens for spraying or dusting, 71-3-904.

Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-402. How lien obtained. In order to acquire a lien, as specified in 71-3-401, the person performing services shall, within 30 days after the services are fully performed, file in the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, and the address to which notice must be directed as required by 71-3-404.

History: En. Sec. 2, Ch. 196, L. 1935; re-en. Sec. 8374.2, R.C.M. 1935; R.C.M. 1947, 45-902; amd. Sec. 2, Ch. 295, L. 1987; amd. Sec. 2, Ch. 529, L. 1989.

71-3-403. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 196, L. 1935; re-en. Sec. 8374.3, R.C.M. 1935; R.C.M. 1947, 45-903; amd. Sec. 1, Ch. 172, L. 1981.

71-3-404. Notice to other lienholders. (1) A person intending to foreclose a lien secured under the provisions of this part shall give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the secretary of state that in not less than 10 days from the date of notice he will institute proceedings for the foreclosure of his lien. Any other labor lienholder to whom notice is given may join in the foreclosure proceedings and is entitled to a pro rata share of the proceeds of the foreclosure sale, as provided in this part. However, if the notified labor lienholder does not join in the proceedings, he is not entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required herein must be given by certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by proof of the giving of notice as required to be given in this section.

History: En. Sec. 5, Ch. 196, L. 1935; re-en. Sec. 8374.5, R.C.M. 1935; R.C.M. 1947, 45-905; amd. Sec. 3, Ch. 295, L. 1987; amd. Sec. 3, Ch. 529, L. 1989.

Cross-References

Filing costs and attorneys' fees — foreclosure, 71-3-124.

71-3-405. Limitations of actions to foreclose liens. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 90 days from the filing of the lien.

History: En. Sec. 10, Ch. 196, L. 1935; re-en. Sec. 8374.10, R.C.M. 1935; R.C.M. 1947, 45-910.

71-3-406. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 196, L. 1935; re-en. Sec. 8374.6, R.C.M. 1935; Sec. 45-906, R.C.M. 1947; (2)En. Sec. 7, Ch. 196, L. 1935; re-en. Sec. 8374.7, R.C.M. 1935; Sec. 45-907, R.C.M. 1947; R.C.M. 1947, 45-906, 45-907.

71-3-407. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 8, Ch. 196, L. 1935; re-en. Sec. 8374.8, R.C.M. 1935; R.C.M. 1947, 45-908.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-408. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 11, Ch. 196, L. 1935; re-en. Sec. 8374.11, R.C.M. 1935; amd. Sec. 11-126, Ch. 264, L. 1963; R.C.M. 1947, 45-911; amd. Sec. 4, Ch. 295, L. 1987.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Part 5

Construction Liens

71-3-501. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 1, p. 332, Bannack Stat.; amd. Sec. 1, p. 509, Cod. Stat. 1871; re-en. Sec. 820, 5th Div. Rev. Stat. 1879; amd. Sec. 1370, 5th Div. Comp. Stat. 1887; amd. Sec. 2130, C. Civ. Proc. 1895; re-en. Sec. 7290, Rev. C. 1907; re-en. Sec. 8339, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1183; amd. Sec. 1, Ch. 23, L. 1925; re-en. Sec. 8339, R.C.M. 1935; amd. Sec. 1, Ch. 408, L. 1971; R.C.M. 1947, 45-501.

71-3-502. Repealed. Sec. 17, Ch. 202, L. 1987.

History: (1) thru (3)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 2877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (4)En. Sec. 10, p. 334, Bannack Stat.; re-en. Sec. 10, p. 511, Cod. Stat. 1871; amd. Sec. 3, p. 238, L. 1877; amd. Sec. 829, 5th Div. Rev. Stat. 1879; amd. Sec. 1376, 5th Div. Comp. Stat. 1887; amd. Sec. 2135, C. Civ. Proc. 1895; re-en. Sec. 7295, Rev. C. 1907; re-en. Sec. 8344, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1186; re-en. Sec. 8344, R.C.M. 1935; Sec. 45-506, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-506.

71-3-503. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 1387, 5th Div. Comp. Stat. 1887; amd. Sec. 3, p. 72, Ex. L. 1887; amd. Sec. 2140, C. Civ. Proc. 1895; re-en. Sec. 7300, Rev. C. 1907; re-en. Sec. 8349, R.C.M. 1921; re-en. Sec. 8349, R.C.M. 1935; amd. Sec. 24, Ch. 535, L. 1975; R.C.M. 1947, 45-511.

71-3-504. Renumbered 71-3-561 by Code Commissioner, 1987.

71-3-505. Renumbered 71-3-562 by Code Commissioner, 1987.

71-3-506 through 71-3-510 reserved.

71-3-511. Repealed. Sec. 17, Ch. 202, L. 1987.

History: En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; R.C.M. 1947, 45-502(1), (2).

71-3-512. Renumbered 71-3-533 by Code Commissioner, 1987.

71-3-513. Renumbered 71-3-534 by Code Commissioner, 1987.

71-3-514. Repealed. Sec. 17, Ch. 202, L. 1987.

History: (1)En. Secs. 8 and 9, p. 334, Bannack Stat.; re-en. Secs. 8 and 9, p. 511, Cod. Stat. 1871; amd. Secs. 1 and 2, p. 238, L. 1877; re-en. Sec. 827, 5th Div. Rev. Stat. 1879; amd. Sec. 1374, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 71, Ex. L. 1887; en. Sec. 2133, C. Civ. Proc. 1895; re-en. Sec. 7293, Rev. C. 1907; re-en. Sec. 8342, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1185; re-en. Sec. 8342, R.C.M. 1935; Sec. 45-504, R.C.M. 1947; (2)En. Sec. 9, p. 334, Bannack Stat.; re-en. Sec. 9, p. 511, Cod. Stat. 1871; re-en. Sec. 828, 5th Div. Rev. Stat. 1879; re-en. Sec. 1375, 5th Div. Comp. Stat. 1887; amd. Sec. 2134, C. Civ. Proc. 1895; re-en. Sec. 7294, Rev. C. 1907; re-en. Sec. 8343, R.C.M. 1921; re-en. Sec. 8343, R.C.M. 1935; Sec. 45-505, R.C.M. 1947; R.C.M. 1947, 45-504(part), 45-505.

71-3-515. Renumbered 71-3-537 by Code Commissioner, 1987.

71-3-516. Renumbered 71-3-551 by Code Commissioner, 1987.

71-3-517. Renumbered 71-3-552 by Code Commissioner, 1987.

71-3-518. Renumbered 71-3-553 by Code Commissioner, 1987.

71-3-519. Renumbered 71-3-563 by Code Commissioner, 1987.

71-3-520 reserved.

71-3-521. Scope. This part creates and provides for the attachment and enforceability of a construction lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. A nonconsensual lien against real estate for improvements made thereon may not arise except as provided in this part.

History: En. Sec. 1, Ch. 202, L. 1987.

71-3-522. Definitions. (1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against real estate arising under this part.

(3) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(4) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If no price is agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(5) (a) "Real estate improvement contract" means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for planting of crops.

History: En. Sec. 2, Ch. 202, L. 1987.

71-3-523. Who may claim a construction lien — limitation. A person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of his contract price.

History: En. Sec. 3, Ch. 202, L. 1987.

71-3-524. Limitation of lien for materials supplied. (1) A lien for furnishing materials arises only if:

(a) (i) the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and

(ii) the intent described in subsection (1)(a)(i) can be shown by a contract of sale, a delivery order, delivery to the site by the lien claimant or at his direction, or by other evidence; and

(b) the materials are:

(i) incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement;

(iii) used for the construction or operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) tools, appliances, or machinery used on the particular improvement. However, a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3).

(2) The delivery of materials to the site of the improvement, whether by the lien claimant or by another, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subsection (1)(b)(iv) is limited as follows:

(a) if they are rented, the lien is for the reasonable rental value for the period of actual use, including any reasonable periods of nonuse provided for in the rental contract; and

(b) if they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value after the completion of the improvement on which they were used.

History: **En. Sec. 4, Ch. 202, L. 1987.**

71-3-525. Extent of lien. (1) A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is thereafter acquired in the real estate, subject to the provisions of this section.

(2) (a) If an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located.

(b) If an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located.

(3) If the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term. Except as provided in subsection (4), it does not attach to the lessor's interest unless he contracted for or agreed to the improvement before it was begun.

(4) (a) A construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by:

(i) a contracting owner who owns less than a fee simple interest; or

(ii) a lessee and the lease is forfeited by the lessee.

(b) If the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to him to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale.

(5) If a contracting owner contracts for improvements on real estate not owned by him as part of an improvement on his real estate or for the purpose of directly benefiting his real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing services or materials to the same extent as if the improvement had been on the contracting owner's real estate.

History: **En. Sec. 5, Ch. 202, L. 1987.**

71-3-526. Amount of lien. (1) A person who has furnished services or materials pursuant to a real estate improvement contract is entitled to a lien for the unpaid part of his contract price, subject to the provisions of 71-3-524.

(2) A person's lien is reduced by the sum of the liens of persons claiming construction liens through him.

History: **En. Sec. 6, Ch. 202, L. 1987.**

71-3-527 through 71-3-530 reserved.

71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), this notice must be given no later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section must be given no later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed. If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless he has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(c) The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

(d) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time he files his lien.

(7) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner.

History: En. Sec. 7, Ch. 202, L. 1987; amd. Sec. 1, Ch. 291, L. 1989; amd. Sec. 1, Ch. 484, L. 1991.

Compiler's Comments

1991 Amendment: In (3), at beginning, inserted exception clause; inserted (4) regarding required notice when payment for services or materials furnished pursuant to a real estate improvement contract is made from funds provided by a regulated lender and secured to pay the improvement being liened; in (5) inserted third and fourth sentences requiring written acknowledgment of receipt of notice if delivered; and made minor changes in style. Amendment effective April 20, 1991.

71-3-532. Content of notice of right to claim lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information and be in substantially the following form:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To:.. Date of mailing: ....
(Owner)

....
(Owner's address)

This is to inform you that .... has begun to provide .... (description of services or materials) ordered by .... for improvements to property you own. The property is located at ....

A lien may be claimed for all services and materials furnished to you if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given. However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

This notice has been sent to you by:

NAME:	IF YOU HAVE ANY QUESTIONS
ADDRESS:	ABOUT THIS NOTICE, PLEASE
TELEPHONE:	CALL US

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

— OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

— CONSULT an attorney, a professional escrow company, or your mortgage lender.

History: En. Sec. 8, Ch. 202, L. 1987; amd. Sec. 2, Ch. 484, L. 1991.

Compiler's Comments

1991 Amendment: In (3), in second paragraph of form of notice, inserted third and fourth sentences establishing a 45-day notice period when funds have been provided by a regulated lender; and made minor changes in style. Amendment effective April 20, 1991.

71-3-533. Notice of completion. (1) The contracting owner may file a notice of completion at any time after the completion of any work or improvement.

(2) The following acts or events constitute completion of any work or improvement for the purpose of filing a notice of completion:

(a) the written acceptance by the contracting owner, his agent, or representative of the building, improvement, or structure. The filing of a notice of completion shall not be considered as an acceptance of the building, improvement, or other structure.

(b) the cessation from labor for 30 days upon any building, improvement, or structure, or the alteration, addition to, or repair thereof.

(3) The notice of completion together with an affidavit of publication as hereinafter required shall be filed in the office of the county clerk and recorder of the county where the property is situated and the notice shall set forth:

(a) the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration;

(b) the contracting owner's name and address and the nature of the title, if any, of the person signing the notice;

(c) a description of the property sufficient for identification;

(d) the name of the contractor, if any.

(4) The notice shall be verified by the contracting owner or his agent.

(5) A copy of the notice of completion shall be published once each week for 3 successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated.

(6) The contracting owner shall give a copy of the notice of completion to any person who has given the contracting owner a notice of a right to claim a lien.

History: (1), (3) thru (5)En. Sec. 3, Ch. 408, L. 1971; Sec. 45-502.1, R.C.M. 1947; (2)En. Sec. 6, p. 333, Bannack Stat.; amd. Sec. 6, p. 510, Cod. Stat. 1871; amd. Sec. 1, p. 84, L. 1874; re-en. Sec. 825, 5th Div. Rev. Stat. 1879; amd. Sec. 1371, 5th Div. Comp. Stat. 1887; amd. Sec. 1, p. 71, Ex. L. 1887; amd. Sec. 2131, C. Civ. Proc. 1895; En. Sec. 1, p. 162, L. 1901; re-en. Sec. 7291, Rev. C. 1907; re-en. Sec. 8340, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1187; re-en. Sec. 8340, R.C.M. 1935; amd. Sec. 2, Ch. 408, L. 1971; Sec. 45-502, R.C.M. 1947; R.C.M. 1947, 45-502(3), 45-502.1; amd. Sec. 13, Ch. 202, L. 1987; Sec. 71-3-512, MCA 1985; redes. 71-3-533 by Code Commissioner, 1987.

71-3-534. Filing with county clerk — notification of owner. (1) The county clerk must endorse upon every lien the day of its filing and make an abstract thereof in a book by him to be kept for that purpose and properly indexed, containing the date of the filing, the name of the person holding the lien, the amount thereof, the name of the person against whose property the lien is filed, and the description of the property to be charged with same.

(2) The clerk shall not file the lien unless there is attached thereto a certification by the lien claimant or his agent that a copy of the lien has been served upon each owner of record of the property named in the lien. Service shall be made by personal service on each owner or by mailing a copy of the

lien by certified or registered mail with return receipt requested to each owner's last known address. The certification shall state whether service was made by delivery of certified or registered mail.

History: En. Sec. 7, p. 333, Bannack Stat.; re-en. Sec. 7, p. 510, Cod. Stat. 1871; amd. Sec. 2, p. 84, L. 1874; re-en. Sec. 826, 5th Div. Rev. Stat. 1879; re-en. Sec. 1373, 5th Div. Comp. Stat. 1887; amd. Sec. 2132, C. Civ. Proc. 1895; re-en. Sec. 7292, Rev. C. 1907; re-en. Sec. 8341, R.C.M. 1921; re-en. Sec. 8341, R.C.M. 1935; R.C.M. 1947, 45-503; amd. Sec. 1, Ch. 515, L. 1981; Sec. 71-3-513, MCA 1985; redes. 71-3-534 by Code Commissioner, 1987.

Cross-References

Definition of registered mail, 1-1-202.

71-3-535. Attachment of lien — filing. (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, he has filed a lien not later than 90 days after:

(a) his final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-533.

(2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located.

(b) The person claiming the lien must certify to the county clerk and recorder that a copy of the lien has been served on the owner of record as provided in 71-3-534(2).

(3) The lien statement must contain:

(a) the name and address of the person claiming the lien;

(b) a description of the real property against which the lien is claimed sufficient to identify it;

(c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why such notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling his obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in 71-3-522.

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate.

History: En. Sec. 9, Ch. 202, L. 1987.

71-3-536. Content of lien notice. The notice for the lien provided for in 71-3-535 may be filed in substantially this form:

Construction Lien

I, ... (insert name and address of person claiming the construction lien), claim a construction lien pursuant to Title 71, chapter 3, of the Montana Code Annotated.

I claim this lien against .... (give description of the real property against which the lien is claimed sufficient to identify it). The contracting owner is .... (insert name of the person who owns the real estate and name of the person who entered into the contract to improve it).

At the request of .... (give name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: .... (give description of the services or materials provided). The amount remaining unpaid is .... (insert the amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on .... (give date) and last furnished services or materials on .... (give date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by 71-3-531 on .... (give date) to .... (give name of contracting owner). .... (If it is not required to give a notice of the right to claim a lien, state the reason it is not required.)

History: En. Sec. 10, Ch. 202, L. 1987.

71-3-537. Acknowledgment of satisfaction of lien — penalty. Whenever any indebtedness which is a lien upon any such real estate, structure, building, or other improvement is paid and satisfied, it is the duty of the creditors to acknowledge satisfaction thereof as in case of a mortgage; and if any creditor fails to acknowledge satisfaction, as aforesaid, he is liable to any person injured by such failure to the amount of such injury and the costs of action.

History: En. Sec. 841, 5th Div. Rev. Stat. 1879; re-en. Sec. 1385, 5th Div. Comp. Stat. 1887; amd. Sec. 2141, C. Civ. Proc. 1895; re-en. Sec. 7301, Rev. C. 1907; re-en. Sec. 8350, R.C.M. 1921; re-en. Sec. 8350, R.C.M. 1935; R.C.M. 1947, 45-512; Sec. 71-3-515, MCA 1985; redes. 71-3-537 by Code Commissioner, 1987.

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-538 through 71-3-540 reserved.

71-3-541. Priority among holders of construction liens. (1) There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which he filed his notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant will receive a pro rata share of the proceeds based on the amount of his respective lien.

(2) Construction liens attaching at different times have priority in the order of attachment.

History: En. Sec. 11, Ch. 202, L. 1987.

71-3-542. Priority of construction liens as against claims other than construction lien claims. (1) A construction lien arising under this part has priority over any other interest, lien, mortgage, or encumbrance that may attach to the building, structure, or improvement or on the real property on which the building, structure, or improvement is located and which is filed after the construction lien attaches.

(2) An interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches has priority over a construction lien arising under this part, except as provided in subsections (3) and (4).

(3) A construction lien has priority, to the extent of the value of the work or improvement that is severable, over an interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches. If the work or improvement may be removed without harm to the rest of the real property, the lienholder may have the value determined, the work or improvement sold separately on foreclosure, and the proceeds delivered to him to satisfy the construction lien.

(4) A construction lien has priority over any interest, lien, mortgage, or encumbrance that is filed before the construction lien attaches if that interest, lien, mortgage, or encumbrance was taken to secure advances made for the purpose of paying for the particular real estate improvement being liened.

History: En. Sec. 12, Ch. 202, L. 1987.

71-3-543 through 71-3-550 reserved.

71-3-551. Substitution of bond allowed — filing — amount — condition. (1) Whenever a construction lien has been filed upon real property or any improvements thereon, the contracting owner of any interest in such property, whether legal or beneficial, may, at any time before the lien claimant has commenced an action to foreclose such lien, file a bond with the clerk of the district court in the county in which such property is situated or, if such property is situated in more than one county, with the clerk of the district court of any county in which a part of such property is situated.

(2) Such bond shall be in an amount 1 ½ times the amount of the lien and shall be either in cash or written by a corporate surety company. If written by a corporate surety, such bond shall be approved by a judge of the district court with which such bond is filed.

(3) The bond shall be conditioned that if the lien claimant shall be finally adjudged to be entitled to recover upon the claim upon which his lien is based, the principal or his sureties shall pay to such claimant the amount of his judgment, together with any interest, costs, attorneys' fees, and other sums which such claimant would be entitled to recover upon the foreclosure of a lien against the principal.

History: En. Sec. 1, Ch. 338, L. 1971; R.C.M. 1947, 45-513; amd. Sec. 14, Ch. 202, L. 1987; Sec. 71-3-516, MCA 1985; redes. 71-3-551 by Code Commissioner, 1987.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

71-3-552. Lien discharged upon filing of bond. Upon the filing of a bond as provided in 71-3-551, the lien against the real property shall forthwith be discharged and released in full and the bond shall be substituted for such lien.

History: En. Sec. 2, Ch. 338, L. 1971; R.C.M. 1947, 45-514; Sec. 71-3-517, MCA 1985; redes. 71-3-552 by Code Commissioner, 1987.

71-3-553. Action upon bond — period of limitation same. (1) When a bond is filed as provided in 71-3-551, the person filing such lien may bring an action upon the bond.

(2) Such action shall be commenced within the time allowed for the commencement of an action upon foreclosure of a lien, and the statute of limitations applicable to a lien foreclosure shall apply to an action upon such bond as it would had no bond been filed.

History: En. Sec. 3, Ch. 338, L. 1971; R.C.M. 1947, 45-515; Sec. 71-3-518, MCA 1985; redes. 71-3-553 by Code Commissioner, 1987.

71-3-554 through 71-3-560 reserved.

71-3-561. Parties. All persons interested in the matter in controversy or in property charged with the lien or having liens thereon may be made parties.

History: En. Sec. 2138, C. Civ. Proc. 1895; re-en. Sec. 7298, Rev. C. 1907; re-en. Sec. 8347, R.C.M. 1921; re-en. Sec. 8347, R.C.M. 1935; R.C.M. 1947, 45-509; Sec. 71-3-504, MCA 1985; redes. 71-3-561 by Code Commissioner, 1987.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-562. Limitation on actions. All actions under this part must be commenced within 2 years from the date of the filing of the lien.

History: En. Sec. 2139, C. Civ. Proc. 1895; re-en. Sec. 7299, Rev. C. 1907; amd. Sec. 1, Ch. 127, L. 1921; re-en. Sec. 8348, R.C.M. 1921; re-en. Sec. 8348, R.C.M. 1935; R.C.M. 1947, 45-510; Sec. 71-3-505, MCA 1985; redes. 71-3-562 by Code Commissioner, 1987.

71-3-563. Rules of practice. (1) Except as otherwise provided in this part, the provisions of Title 25 are applicable to and constitute the rules of practice in the proceedings mentioned in this part.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 2136, C. Civ. Proc. 1895; re-en. Sec. 7296, Rev. C. 1907; re-en. Sec. 8345, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1198; re-en. Sec. 8345, R.C.M. 1935; Sec. 45-507, R.C.M. 1947; (2)En. Sec. 2137, C. Civ. Proc. 1895; re-en. Sec. 7297, Rev. C. 1907; re-en. Sec. 8346, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1199; re-en. Sec. 8346, R.C.M. 1935; Sec. 45-508, R.C.M. 1947; R.C.M. 1947, 45-507, 45-508; Sec. 71-3-519, MCA 1985; redes. 71-3-563 by Code Commissioner, 1987.

Cross-References

Civil Procedure, Title 25.

Part 6

Loggers' Liens

71-3-601. Definition of lumber — who may have lien. (1) The term "lumber", as used in this part, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from sawlogs or other timber.

(2) Every person, general partnership, limited partnership, corporation, or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent or a contractor or subcontractor or any person in behalf of such owner or his agent or a contractor or subcontractor. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

(3) Every person performing work or labor or assisting in manufacturing sawlogs and other timber into lumber and shingles has a lien upon such lumber while the same remains at the mill where it was manufactured or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner.

(4) Any person who shall permit another to go upon his timberland and cut thereon sawlogs, piling, railroad ties, cordwood, or other timber has a lien upon the same for the price agreed to be paid for such privilege or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

History: (1), (3)En. Sec. 2, p. 127, L. 1899; re-en. Sec. 5820, Rev. C. 1907; re-en. Sec. 8319, R.C.M. 1921; re-en. Sec. 8319, R.C.M. 1935; Sec. 45-402, R.C.M. 1947; (2)En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R.C.M. 1921; Cal. Civ. C. Sec. 3065; re-en. Sec. 8318, R.C.M. 1935; amd. Sec. 1, Ch. 59, L. 1967; Sec. 45-401, R.C.M. 1947; (4)En. Sec. 3, p. 127, L. 1899; re-en. Sec. 5821, Rev. C. 1907; re-en. Sec. 8320, R.C.M. 1921; re-en. Sec. 8320, R.C.M. 1935; Sec. 45-403, R.C.M. 1947; R.C.M. 1947, 45-401, 45-402, 45-403.

71-3-602. Priority. The liens provided for in this part are preferred liens and prior to any other liens, and no sale or transfer of any sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this part, those for work and labor shall be preferred. As between liens for work and labor claimed by several laborers on the same logs or lot of logs, the claims for work and labor done or performed on the identical logs proceeded against to the extent that said logs can be identified shall be preferred as against the general claims of liens for work and labor recognized and provided for in this part.

History: En. Sec. 4, p. 127, L. 1899; re-en. Sec. 5822, Rev. C. 1907; re-en. Sec. 8321, R.C.M. 1921; re-en. Sec. 8321, R.C.M. 1935; R.C.M. 1947, 45-404.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — liens for spraying or dusting, 71-3-904.

Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-603. Extent of liens. (1) The person rendering the service or doing the work or labor named in 71-3-601(1) through (3) is only entitled to the liens as provided herein for services, work, or labor for the period of 3 calendar months, or any part thereof next preceding the filing of the claim, as provided in 71-3-605.

(2) The person granting the privilege mentioned in 71-3-601(4) is only entitled to the lien as provided therein for sawlogs, piling, railroad ties, cordwood, or other timber cut during the 3 months next preceding the filing of the claim, as provided in 71-3-606.

History: (1)En. Sec. 5, p. 128, L. 1899; re-en. Sec. 5823, Rev. C. 1907; re-en. Sec. 8322, R.C.M. 1921; re-en. Sec. 8322, R.C.M. 1935; Sec. 45-405, R.C.M. 1947; (2)En. Sec. 6, p. 128, L. 1899; re-en. Sec. 5824, Rev. C. 1907; re-en. Sec. 8323, R.C.M. 1921; re-en. Sec. 8323, R.C.M. 1935; Sec. 45-406, R.C.M. 1947; R.C.M. 1947, 45-405, 45-406; amd. Sec. 132, Ch. 370, L. 1987.

71-3-604. Duration of lien. No lien provided for in this part binds any sawlogs, piling, railroad ties, cordwood, or other timber or lumber and shingles for a longer period than 8 calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time to enforce the same. However, in case such civil action so commenced should for any cause, other than the merits, be dismissed, then the lien shall continue for the term of 1 calendar month, if the 8 months have expired to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of 8 months hereinbefore stated.

History: En. Sec. 10, p. 129, L. 1899; re-en. Sec. 5828, Rev. C. 1907; re-en. Sec. 8327, R.C.M. 1921; re-en. Sec. 8327, R.C.M. 1935; R.C.M. 1947, 45-410.

71-3-605. How to obtain lien — form of claim. (1) Every person, within 30 days after the close of the rendition of the services or after the close of the work or labor mentioned in 71-3-601, claiming the benefit hereof must file for record with the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut or in which such lumber or shingles were manufactured a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any. In case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth. It shall also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true.

(2) The claim shall be substantially in the following form:

...., Claimant, vs. ....

Notice is hereby given that .... of .... County, state of Montana, claims a lien upon a .... of ...., being about .... in quantity, which were cut or manufactured in .... County, state of Montana, are marked thus ...., and are now lying in a .... for labor performed upon and assistance rendered in .... said ....; that the name of the owner or reputed owner is ....; that .... employed said .... to perform such labor and render such assistance upon the following terms and conditions, to wit: The said .... agreed to pay the said .... for such labor and assistance ....; that said contract has been faithfully performed and fully complied with on the part of said ...., who performed labor upon and assisted in .... said .... for a period of ....; that said labor and assistance were so performed and rendered upon said .... between the .... day of .... and the .... day of ...., and the rendition of said service was closed on the .... day of ...., and 30 days have not elapsed since that time; that the amount of claimant's demand for said services is ....; that no part thereof has been paid except ...., and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ...., in which amount he claims a lien upon said ....; that said .... also claims a lien on all said .... now owned by said .... of said county, to secure payment for the work and labor performed in obtaining or securing the said logs, piling, railroad ties, cordwood, or other timber, lumber, or shingles herein described.

...., Claimant.

State of Montana,
County of ....

...., being first duly sworn, on oath says that he is .... named in the foregoing claim, has heard the same read, and knows the contents thereof, and believes the same to be true.

....

Subscribed and sworn to before me this .... day of ....

....

History: En. Sec. 7, p. 128, L. 1899; re-en. Sec. 5825, Rev. C. 1907; re-en. Sec. 8324, R.C.M. 1921; re-en. Sec. 8324, R.C.M. 1935; R.C.M. 1947, 45-407.

Cross-References

Form of ordinary oath, 1-6-102.

Affirmation or declaration in lieu of oath, 1-6-104.

71-3-606. Claim for lien of landowner same. Every person mentioned in 71-3-601(4) claiming the benefit must file for record with the county clerk of the county in which such sawlogs, piling, railroad ties, cordwood, or other timber were cut a claim in substance the same as provided in 71-3-605 and verified as therein provided.

History: En. Sec. 8, p. 129, L. 1899; re-en. Sec. 5826, Rev. C. 1907; re-en. Sec. 8325, R.C.M. 1921; re-en. Sec. 8325, R.C.M. 1935; R.C.M. 1947, 45-408.

71-3-607. Immaterial defects in claim. No mistake or error in the statement of the demand or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant or in the description of the property against which the claim is filed shall invalidate the lien unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due was made with intent to defraud or the court shall find that an innocent third party without notice, actual or constructive, has, since the claim was filed, become a bona fide owner of the property subject to the lien and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

History: En. Sec. 13, p. 130, L. 1899; re-en. Sec. 5831, Rev. C. 1907; re-en. Sec. 8330, R.C.M. 1921; re-en. Sec. 8330, R.C.M. 1935; R.C.M. 1947, 45-413.

71-3-608. Duties of county clerk. The county clerk must file any claim presented under the provisions of this part, endorse thereon the time of receiving the same, and keep the same in his office for the inspection of all persons and shall enter in a book, properly ruled and kept for such purpose, the names of all the parties, such names to be alphabetically arranged, the amount of the lien, and the time of filing the same.

History: En. Sec. 9, p. 129, L. 1899; re-en. Sec. 5827, Rev. C. 1907; re-en. Sec. 8326, R.C.M. 1921; re-en. Sec. 8326, R.C.M. 1935; R.C.M. 1947, 45-409.

Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-609 and 71-3-610 reserved.

71-3-611. Enforcement of lien. (1) The liens provided for in this part shall be enforced by a civil action in the district court of the county wherein the lien was filed and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property, so as to hold it for the satisfaction of any lien that may be against it.

(2) Any person who shall bring a civil action to enforce the lien provided for, any person having a lien as provided for, or who shall be made a party to any such civil action has the right to demand that such lien be enforced against the whole or any part of the sawlogs, piling, railroad ties, cordwood, or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining or which he has cut on his timberland during the 3 months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said sawlogs, piling, railroad ties, cordwood, or other timber or in manufacturing said lumber into shingles during the whole or any part of the 3 months mentioned in 71-3-603, or for timber cut during the whole or any part of the 3 months above mentioned.

(3) Where proceedings are commenced against any lot of sawlogs, piling, railroad ties, cordwood or other timber or lumber or shingles, as herein provided, and some of the lienors claim liens against these specific sawlogs, piling, railroad ties, cordwood, or other timber or lumber or shingles proceeded against and others against the same generally to secure their claim for work

and labor, the priority of the liens shall be determined as hereinbefore provided.

History: (1)En. Sec. 11, p. 130, L. 1899; re-en. Sec. 5829, Rev. C. 1907; re-en. Sec. 8328, R.C.M. 1921; re-en. Sec. 8328, R.C.M. 1935; Sec. 45-411, R.C.M. 1947; (2), (3)En. Sec. 12, p. 130, L. 1899; re-en. Sec. 5830, Rev. C. 1907; re-en. Sec. 8329, R.C.M. 1921; re-en. Sec. 8329, R.C.M. 1935; Sec. 45-412, R.C.M. 1947; R.C.M. 1947, 45-411, 45-412; amd. Sec. 133, Ch. 370, L. 1987.

Cross-References

Rules of Civil Procedure incorporated into statutes, Rule 81(c), M.R.Civ.P. (see Title 25, ch. 20).

71-3-612. Requirements to be bona fide purchaser. It shall be conclusively presumed by the court that a party purchasing the property subject to the lien within the 30 days given herein to claimants wherein to file their liens is not an innocent third party nor that he has become a bona fide owner of the property subject to the lien unless it shall appear that he has paid full value for the property and has seen that the purchase money of the property has been applied to the payment of such bona fide claims as are entitled to liens upon the same property under the provisions of this part, according to the priorities herein established.

History: En. Sec. 14, p. 131, L. 1899; re-en. Sec. 5832, Rev. C. 1907; re-en. Sec. 8331, R.C.M. 1921; re-en. Sec. 8331, R.C.M. 1935; R.C.M. 1947, 45-414.

71-3-613. Parties. Any number of persons claiming liens under this part may join in the affidavit in 71-3-605 and may join in the same action and when separate actions are commenced, the court may consolidate them.

History: En. Sec. 15, p. 131, L. 1899; re-en. Sec. 5833, Rev. C. 1907; re-en. Sec. 8332, R.C.M. 1921; re-en. Sec. 8332, R.C.M. 1935; R.C.M. 1947, 45-415(part).

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-614. Judgment and execution. In each civil action, judgment must be rendered in favor of each person having a lien for the amount due to him, and the court shall order any property subject to the lien to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment according to the priorities established in this part, pro rata in its class, according to the amount of such judgment.

History: En. Sec. 16, p. 131, L. 1899; re-en. Sec. 5834, Rev. C. 1907; re-en. Sec. 8333, R.C.M. 1921; re-en. Sec. 8333, R.C.M. 1935; R.C.M. 1947, 45-416.

Cross-References

Execution of judgment, Title 25, ch. 13.

71-3-615. Sale of property to satisfy lien. The court may order any property subject to a lien as provided in this part to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered, as provided in 71-3-614, and the proceeds of such sale must be paid into court to be applied as directed in 71-3-614.

History: En. Sec. 17, p. 132, L. 1899; re-en. Sec. 5835, Rev. C. 1907; re-en. Sec. 8334, R.C.M. 1921; re-en. Sec. 8334, R.C.M. 1935; R.C.M. 1947, 45-417.

71-3-616. Penalty for destroying means of identification of property. Any person who shall eloign, injure, or destroy or who shall render difficult, uncertain, or impossible of identification any sawlogs, piling, railroad ties, cordwood, shingles, or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to a lienholder for the damages to the amount secured by his lien, and it being shown to the court in a civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the person, provided he be a party to such action, or the damages may be recovered by a civil action against such person.

History: En. Sec. 18, p. 132, L. 1899; re-en. Sec. 5836, Rev. C. 1907; re-en. Sec. 8335, R.C.M. 1921; re-en. Sec. 8335, R.C.M. 1935; R.C.M. 1947, 45-418.

Part 7

Crop Liens for Seed or Grain and Liens for Hail Insurance

71-3-701. Lien for seed or grain. Any person, company, association, or corporation who furnishes to another seed to be sown or planted or funds or means with which to purchase seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by him or held under government entry, upon filing the statement provided for in 71-3-703, has a lien not exceeding the purchase price of the seed or grain furnished upon the crop produced from the seed or grain furnished, or any part thereof, and upon the seed or grain threshed from the crop to secure the payment of the amount or the value of the seed or grain furnished or the funds or means advanced to purchase the seed or grain.

History: En. Sec. 1, Ch. 23, L. 1915; amd. Sec. 1, Ch. 15, Ex. L. 1918; re-en. Sec. 8359, R.C.M. 1921; re-en. Sec. 8359, R.C.M. 1935; R.C.M. 1947, 45-701; amd. Sec. 1, Ch. 189, L. 1989.

Cross-References

Liens on improvements and crops for amount due state — state lands, 77-2-336.

Liens on crops and improvements — state lands, 77-6-112.

71-3-702. Priority. The lien provided by 71-3-701 shall, as to the crop covered thereby, have priority over all other liens and encumbrances thereon.

History: En. Sec. 3, Ch. 23, L. 1915; re-en. Sec. 3, Ch. 15, Ex. L. 1918; re-en. Sec. 8361, R.C.M. 1921; re-en. Sec. 8361, R.C.M. 1935; R.C.M. 1947, 45-703.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.
Priority — threshers' liens, 71-3-804.
Priority — liens for spraying or dusting, 71-3-904.
Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.
Priority — agisters' liens and liens for service, 71-3-1202.

71-3-703. How to obtain lien. Any person, company, association, or corporation who is entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or money advanced for the seed or grain, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. Unless the person entitled to a lien files the lien statement within the time required, he is considered to have waived the right to a lien.

History: En. Sec. 2, Ch. 23, L. 1915; amd. Sec. 2, Ch. 15, Ex. L. 1918; re-en. Sec. 8360, R.C.M. 1921; re-en. Sec. 8360, R.C.M. 1935; R.C.M. 1947, 45-702; amd. Sec. 1, Ch. 317, L. 1983; amd. Sec. 5, Ch. 295, L. 1987; amd. Sec. 4, Ch. 529, L. 1989.

71-3-704. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R.C.M. 1921; re-en. Sec. 8362, R.C.M. 1935; amd. Sec. 11-123, Ch. 264, L. 1963; R.C.M. 1947, 45-704; amd. Sec. 6, Ch. 295, L. 1987.

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.
Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-705. Destruction of records — when allowed. (1) All seed liens which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state shall be retained by such county clerk in a file kept by him for such purposes for a period of 8 years from the time when said seed lien has ceased to be a lien on the property described therein.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all seed liens which have been preserved for the period of time specified in this section.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part).

71-3-706 through 71-3-710 reserved.

71-3-711. Lien for hail insurance. Any person, company, association, or corporation which shall furnish to another hail insurance for the purpose of protecting the party's crop from damage by hail during the hail season of the then-growing or seeded crop, whether the crop be on the land owned or contracted to be purchased, used, leased, occupied, or rented by the insured or held under government entry, shall, upon filing the statement provided for in 71-3-712, have a lien, subject to any seed lien that may then or thereafter be placed on record against the crop, for the amount due the person, company, association, or corporation furnishing the hail insurance from the insured so protected, whether it be on a note given, open account, or assessment, due or to become due, for the current year's protection, upon the crop produced on the land so protected or any part thereof and upon the seed or grain threshed from such crop to secure the payment of the amount due or the assessment levied against the insured for the insurance provided.

History: En. Sec. 1, Ch. 223, L. 1921; re-en. Sec. 8363, R.C.M. 1921; re-en. Sec. 8363, R.C.M. 1935; R.C.M. 1947, 45-705.

Cross-References

Foreclosure of crop lien by person receiving hail insurance, 80-2-231.

71-3-712. How lien obtained. Any person, company, association, or corporation who is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125. A mutual company may file a lien for the largest amount that may become due under its assessment power, and in the event that the amount assessed is not as large as the amount of the lien claimed, the amount assessed and due is the amount the mutual insurance company is entitled to under this lien. Unless the person, company, association, or corporation entitled to a lien files the agricultural lien statement within the time required, he or it is considered to have waived the right to a lien.

History: En. Sec. 2, Ch. 223, L. 1921; re-en. Sec. 8364, R.C.M. 1921; re-en. Sec. 8364, R.C.M. 1935; R.C.M. 1947, 45-706; amd. Sec. 7, Ch. 295, L. 1987; amd. Sec. 5, Ch. 529, L. 1989.

71-3-713. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the current year, it is the duty of the lienor to acknowledge satisfaction thereof within 20 days after receiving payment and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before March 1 of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R.C.M. 1921; re-en. Sec. 8365, R.C.M. 1935; amd. Sec. 11-124, Ch. 264, L. 1963; R.C.M. 1947, 45-707; amd. Sec. 8, Ch. 295, L. 1987.

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Part 8

Threshers' Liens

71-3-801. Who may have lien — amount. (1) All threshermen or swathers owning or operating threshing or swathing machines and all owners of combine harvesters and threshers shall have a lien upon the grain and other crops swathed or threshed by said threshing or swathing machine or cut and threshed by said combine harvester and thresher for and on account of the services rendered and the labor performed by them on said grain and crops and which lien may be claimed by the owner of said grain for the reasonable value of such services if same are performed by him. Liens on grain and other crops shall be charged for at the prevailing price for that particular locality in which such grain or other crop is threshed, harvested, or combined, provided notices are given and lien is filed within the time provided by this part.

(2) If the prevailing price for threshing, harvesting, or combining grain or other crop is disputed by the thresherman or swather and the owner of the grain or other crop, the matter may be submitted to arbitration under the provisions of Title 27, chapter 5.

History: **En. Sec. 1, Ch. 25, L. 1915; re-en. Sec. 8366, R.C.M. 1921; amd. Sec. 1, Ch. 20, L. 1929; amd. Sec. 1, Ch. 112, L. 1931; amd. Sec. 1, Ch. 124, L. 1933; re-en. Sec. 8366, R.C.M. 1935; amd. Sec. 1, Ch. 308, L. 1973; R.C.M. 1947, 45-801; amd. Sec. 25, Ch. 684, L. 1985.**

Cross-References

Liens on improvements and crops for amount due state — state lands, 77-2-336.

Liens on crops and improvements — state lands, 77-6-112.

71-3-802. How lien obtained. (1) A person entitled to a lien under 71-3-801 shall file with the office of the secretary of state a statement of agricultural lien, as provided in 71-3-125, within 30 days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by the combined harvester and thresher.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, the threshermen, swather, or owner of the combine desiring to claim a lien shall also serve written notices upon the elevatorman or other private purchaser that he will claim and file a lien upon the grain or other crops for his services or labor performed in threshing or combining and threshing the grain or crops. A copy of the statement of agricultural lien mailed by certified mail is sufficient notice to the elevatorman or other private purchaser.

History: **En. Sec. 2, Ch. 25, L. 1915; amd. Sec. 1, Ch. 162, L. 1917; amd. Sec. 1, Ch. 71, L. 1921; re-en. Sec. 8367, R.C.M. 1921; amd. Sec. 2, Ch. 20, L. 1929; amd. Sec. 2, Ch. 112, L. 1931; re-en. Sec. 8367, R.C.M. 1935; amd. Sec. 2, Ch. 308, L. 1973; R.C.M. 1947, 45-802; amd. Sec. 9, Ch. 295, L. 1987; amd. Sec. 6, Ch. 529, L. 1989; amd. Sec. 1, Ch. 427, L. 1991.**

Compiler's Comments

1991 Amendment: In beginning of (1) substituted "entitled to a lien under 71-3-801" for "intending to avail himself of the benefits of this part", near middle substituted "30 days" for "10 days", and at end deleted "a notice that within 20 days a lien, as specified in 71-3-801, will be claimed"; and in (2) inserted last sentence concerning notice by certified mail.

Cross-References

Grain — standards, storage, and merchandising, Title 80, ch. 4.

71-3-803. Repealed. Sec. 8, Ch. 529, L. 1989.

History: En. Sec. 3, Ch. 25, L. 1915; re-en. Sec. 8368, R.C.M. 1921; re-en. Sec. 8368, R.C.M. 1935; R.C.M. 1947, 45-803.

71-3-804. Priority. The lien for work or labor done or services rendered as specified in 71-3-801 shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or other crops, except the lien for the seed furnished for the purpose of growing this particular crop.

History: En. Sec. 4, Ch. 25, L. 1915; re-en. Sec. 8369, R.C.M. 1921; re-en. Sec. 8369, R.C.M. 1935; R.C.M. 1947, 45-804.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Lien for seed or grain, 71-3-701.

Priority — liens for seed or grain, 71-3-702.

Priority — liens for spraying or dusting, 71-3-904.

Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-805. Who considered owners. Every person, including guardians or minors, married persons, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are threshed or the services rendered or labor performed is deemed the owner thereof for the purposes herein mentioned.

History: En. Sec. 8, Ch. 25, L. 1915; re-en. Sec. 8373, R.C.M. 1921; re-en. Sec. 8373, R.C.M. 1935; amd. Sec. 26, Ch. 535, L. 1975; R.C.M. 1947, 45-808.

71-3-806. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon may be made parties to an action for the foreclosure thereof.

History: En. Sec. 7, Ch. 25, L. 1915; re-en. Sec. 8372, R.C.M. 1921; re-en. Sec. 8372, R.C.M. 1935; R.C.M. 1947, 45-807.

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-807. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 6 months from the filing of the lien.

History: En. Sec. 5, Ch. 25, L. 1915; re-en. Sec. 8370, R.C.M. 1921; amd. Sec. 1, Ch. 28, L. 1923; re-en. Sec. 8370, R.C.M. 1935; R.C.M. 1947, 45-805.

71-3-808. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid within 30 days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R.C.M. 1921; re-en. Sec. 8374, R.C.M. 1935; amd. Sec. 11-125, Ch. 264, L. 1963; R.C.M. 1947, 45-809; amd. Sec. 10, Ch. 295, L. 1987.

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-809. Rules of practice. Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

History: En. Sec. 6, Ch. 25, L. 1915; re-en. Sec. 8371, R.C.M. 1921; re-en. Sec. 8371, R.C.M. 1935; R.C.M. 1947, 45-806.

71-3-810. Destruction of records — when allowed. (1) All threshers' liens which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state shall be retained by such county clerk in a file kept by him for such purposes for a period of 8 years from the time when said threshers' lien has ceased to be a lien on the property described therein.

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all threshers' liens which have been preserved for the period of time specified in this section.

History: (1)En. Sec. 1, Ch. 113, L. 1935; re-en. Sec. 4813.3, R.C.M. 1935; amd. Sec. 11-112, Ch. 264, L. 1963; Sec. 16-2922, R.C.M. 1947; (2)En. Sec. 2, Ch. 113, L. 1935; re-en. Sec. 4813.4, R.C.M. 1935; amd. Sec. 11-113, Ch. 264, L. 1963; Sec. 16-2923, R.C.M. 1947; R.C.M. 1947, 16-2922(part), 16-2923(part).

Part 9

Crop or Grain Liens for Spraying or Dusting

71-3-901. Who may have lien — amount. Any person, firm, corporation, or partnership which shall under contract, express or implied, perform labor or services or furnish material in crop dusting or spraying grains or crops for the purpose of weed, disease, or insect control for promoting the growth of such grains or crops shall have a lien upon all such grains or crops so crop dusted or sprayed for and on account of the labor or service performed and material furnished, upon complying with the provisions of this part; provided, however, that any such lien shall not exceed the prevailing price charged in the particular locality in which such grain or crops are sprayed or dusted.

History: **En. Sec. 1, Ch. 205, L. 1953; R.C.M. 1947, 45-1401; amd. Sec. 1, Ch. 316, L. 1983.**

71-3-902. How lien obtained. Any person, firm, corporation, or partnership who is entitled to a lien under this part shall, within 60 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125.

History: **En. Sec. 2, Ch. 205, L. 1953; amd. Sec. 1, Ch. 65, L. 1955; R.C.M. 1947, 45-1402; amd. Sec. 11, Ch. 295, L. 1987; amd. Sec. 7, Ch. 529, L. 1989.**

71-3-903. Repealed. Sec. 8, Ch. 529, L. 1989.

History: **En. Sec. 3, Ch. 205, L. 1953; R.C.M. 1947, 45-1403.**

71-3-904. Priority. The lien for labor or services performed or material furnished as specified in this part shall be prior to and have precedence over any mortgage, encumbrance, or other lien upon said grain or crops, except the lien for seed, hail insurance, threshing, labor, and warehouse services furnished for the purpose of growing or handling the particular grain or crops.

History: **En. Sec. 4, Ch. 205, L. 1953; R.C.M. 1947, 45-1404.**

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Liens for salaries and wages, 71-3-301.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Lien for seed or grain, 71-3-701.

Priority — liens for seed or grain, 71-3-702.

Threshers' liens, 71-3-801.

Priority — threshers' liens, 71-3-804.

Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-905. Who considered owners. Every person, including guardians or minors, and any company, firm, association, or corporation for whose use or benefit the grain or other crops mentioned herein are dusted or sprayed or the services or labor performed or material furnished is deemed the owner thereof for the purposes herein mentioned.

History: **En. Sec. 9, Ch. 205, L. 1953; R.C.M. 1947, 45-1409.**

71-3-906. Parties. All persons interested in the matter in controversy or the property to be charged with the lien or having liens thereon shall be made parties to an action for the foreclosure thereof.

History: **En. Sec. 8, Ch. 205, L. 1953; R.C.M. 1947, 45-1408.**

Cross-References

Parties, Rules 17 through 25, M.R.Civ.P. (see Title 25, ch. 20).

71-3-907. Limitations of actions. All actions for the foreclosure and enforcement of the lien herein provided for must be commenced within 1 year from the day of the filing of the lien.

History: **En. Sec. 5, Ch. 205, L. 1953; R.C.M. 1947, 45-1405.**

71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty. (1) Whenever the indebtedness which is a lien upon any grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge said lien within 30 days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action.

(2) A termination statement as described in 30-9-404 must be filed with the secretary of state with the same obligations and penalties described in subsection (1).

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963; R.C.M. 1947, 45-1410; amd. Sec. 12, Ch. 295, L. 1987.

Cross-References

Acknowledgment, Title 1, ch. 5, part 2.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-909. Rules of practice. (1) Except as otherwise provided, the provisions of Title 25 are applicable to and constitute the rules of practice for the enforcement and foreclosure of the lien herein provided for.

(2) The provisions of Title 25 relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this part, apply to the proceedings mentioned in this part.

History: (1)En. Sec. 6, Ch. 205, L. 1953; Sec. 45-1406, R.C.M. 1947; (2)En. Sec. 7, Ch. 205, L. 1953; Sec. 45-1407, R.C.M. 1947; R.C.M. 1947, 45-1406, 45-1407.

Cross-References

Civil Procedure, Title 25.

Part 10

Labor and Material Liens on Oil and Gas Wells and Pipelines

71-3-1001. Definitions. As used in this part, the following definitions apply:

(1) "Furnish" means sell or rent.

(2) "Material" means material, fuel, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include drilling rigs or hoists or their integral component parts except wire lines.

(3) "Owner" includes a person holding any interest in the legal or equitable title, or both, and purchasers under executory contract.

History: (1), (2)En. 45-1012 by Sec. 12, Ch. 143, L. 1957; Sec. 45-1012, R.C.M. 1947; (3)En. 45-1011 by Sec. 11, Ch. 143, L. 1957; Sec. 45-1011, R.C.M. 1947; R.C.M. 1947, 45-1011(part), 45-1012.

71-3-1002. Lien for labor and materials furnished for use on leasehold for oil and gas purposes or pipelines. (1) Any person, corporation, or partnership which shall under contract, expressed or implied, with the owner of any leasehold for oil and gas purposes or the owner of any gas pipe or oil pipeline or with the trustee or agent of such owner, perform labor or furnish material or services used in the digging, drilling, torpedoing, completing, operating, or repairing of any oil or gas well or oil or gas pipeline or who shall furnish any material or services or perform any labor in constructing or putting together any of the machinery used in digging, drilling, torpedoing, operating, completing, or repairing any oil or gas well or oil or gas pipeline, whether or not such material is incorporated therein or becomes a part thereof, shall have a lien for the amount due therefor, including transportation and mileage charges connected therewith and interest from the date the same was due, upon the whole of such leasehold or oil or gas pipeline, the appurtenances thereon, and upon all material owned by the owner of such leasehold or oil or gas pipeline and used in the digging, drilling, torpedoing, completing, operating, or repairing of any such oil or gas well or oil or gas pipeline and upon all oil or gas wells located on such leasehold and upon all oil or gas produced from such leasehold and the proceeds thereof inuring to the working interest therein as such working interest existed on the date the labor was first performed or materials or services were first furnished.

(2) However, in the event labor is performed for, or materials or services are furnished to, the owner of the working interest in only a portion of the acreage covered by a lease, the lien granted herein shall be restricted to such portion of the acreage.

(3) The lien herein granted shall not extend to any royalty interests, overriding royalty interests, or oil payments created prior to the date the first item of material or services are furnished or the date the first labor is performed.

History: En. Sec. 1, Ch. 45, L. 1917; re-en. Sec. 8375, R.C.M. 1921; amd. Sec. 1, Ch. 152, L. 1923; re-en. Sec. 8375, R.C.M. 1935; amd. Sec. 1, Ch. 143, L. 1957; R.C.M. 1947, 45-1001.

71-3-1003. Lien for labor or supplies furnished for contractor. Any person, partnership, or corporation that furnishes materials or services as a subcontractor or to a contractor or a subcontractor or any person who performs labor under a subcontractor with a contractor or who, as an artisan or day laborer in the employ of such contractor or subcontractor, performs any such labor has a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section attaches to all materials and fixtures owned by such original contractor or subcontractor for whom the labor is performed or materials or services furnished and used or employed or furnished to be used or employed in the drilling or operating of such oil and gas wells or in the construction of such pipeline.

History: En. Sec. 2, Ch. 45, L. 1917; re-en. Sec. 8376, R.C.M. 1921; re-en. Sec. 8376, R.C.M. 1935; amd. Sec. 2, Ch. 143, L. 1957; R.C.M. 1947, 45-1002; amd. Sec. 4, Ch. 11, L. 1979.

71-3-1004. How lien perfected. Every person, corporation, or partnership claiming a lien under this part shall file with the county clerk of the county in which such land, leasehold, or pipeline or some part thereof is situated a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold or pipeline, and if the claimant be a claimant under 71-3-1003, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. Such statement must be filed within 6 months after the date upon which said material or services were last furnished or labor last performed under contract.

History: En. 45-1004.1 by Sec. 2, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.1.

71-3-1005. Enforcement of liens — duty of county clerks. The liens herein created shall be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws for materialmen's and construction liens.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R.C.M. 1921; amd. Sec. 2, Ch. 152, L. 1923; re-en. Sec. 8377, R.C.M. 1935; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963; amd. Sec. 1, Ch. 170, L. 1973; R.C.M. 1947, 45-1003.

Cross-References

Attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

Construction liens — filing with County Clerk, 71-3-534.

71-3-1006. Date lien arises. The lien provided for in this part arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; R.C.M. 1947, 45-1004.2(part).

71-3-1007. Priority. (1) Upon compliance with the provisions of 71-3-1004, such lien shall be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by this part subsequent to the date the lien herein provided for arises.

(2) All liens affixed by virtue of this part upon the same property shall be of equal standing.

(3) The lien herein provided for shall have no priority over other liens, encumbrances, or mortgages which are filed or recorded prior to the date of the furnishing of the first item of material or services or the date of performance of the first labor.

History: (1), (2)En. 45-1004.2 by Sec. 3, Ch. 170, L. 1973; Sec. 45-1004.2, R.C.M. 1947; (3)En. 45-1004.3 by Sec. 4, Ch. 170, L. 1973; Sec. 45-1004.3, R.C.M. 1947; R.C.M. 1947, 45-1004.2(part), 45-1004.3.

Cross-References

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — liens for spraying or dusting, 71-3-904.

Priority — agisters' liens and liens for service, 71-3-1202.

71-3-1008. Lien for running account as single contract. All labor performed or materials or services furnished by any person entitled to a lien under this part upon the same leasehold for oil and gas purposes or the same pipeline shall for the purposes of this part be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than 6 months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

History: **En. 45-1007 by Sec. 7, Ch. 143, L. 1957; R.C.M. 1947, 45-1007.**

71-3-1009. Liability fixed. Nothing in this part shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated by such owner to be paid for such materials or services furnished or labor performed. However, the risk of all payments made to the original contractor shall be upon such owner if such payments be made after written notice from a person other than an original contractor is received by such owner at his residence or principal place of business, which notice shall set forth the name and address of the claimant and the amount and nature of his claim. Payment by the owner to the original contractor of all or any part of the contract price, prior to the receipt of such notice, shall operate to discharge and satisfy all liens attaching to the property of such owner by virtue of this part to the extent of such payment. The owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

History: **En. 45-1008 by Sec. 8, Ch. 143, L. 1957; R.C.M. 1947, 45-1008.**

71-3-1010. Removal of property covered by lien prohibited — effect of wrongful removal. (1) When any lien provided for by this part shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property or any part thereof or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien.

(2) In the event such property or some part thereof is about to be removed or disposed of in violation of this section, the district court for the county where such property or any part thereof is located may, upon the verified application of the holder of such lien, enjoin all persons alleged in such application to be about to remove or dispose of such property or some part thereof from removing or disposing of the same.

(3) In the event such property or any part thereof shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state.

(4) This section shall not preclude the appointment of a receiver in actions brought to foreclose liens given by this part upon any equitable grounds warranting such appointment.

History: **En. 45-1009 by Sec. 9, Ch. 143, L. 1957; R.C.M. 1947, 45-1009.**

71-3-1011. Notice to purchaser of oil and gas. Anything in this part to the contrary notwithstanding, any lien claimed by virtue of this part insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser at his residence or principal place of business. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the interest upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered or certified letter deposited in the United States mail. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the interest upon which the lien is claimed or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

History: En. 45-1010 by Sec. 10, Ch. 143, L. 1957; R.C.M. 1947, 45-1010.

71-3-1012. Effect on interest which is less than fee interest. If a lien provided for in this part attaches to an estate less than the fee, forfeiture of such estate shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this part attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled shall not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien attached prior to such failure.

History: En. 45-1011 by Sec. 11, Ch. 143, L. 1957; R.C.M. 1947, 45-1011(part).

Part 11

Liens of Physicians, Nurses, Physical Therapists, Occupational Therapists, Chiropractors, Dentists, and Hospitals in Personal Injury Claims

Part Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1101 through 71-3-1105. Repealed. Sec. 9, Ch. 532, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

71-3-1101 through 71-3-1105. En. Sec. 1 through 5, Ch. 57, L. 1931; re-en. Sec. 8395.1 through 8395.5, R.C.M. 1935; R.C.M. 1947, 45-1201 through 45-1205.

71-3-1106 through 71-3-1110 reserved.

71-3-1111. Short title. This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, and Hospital Lien Act".

History: **En. Sec. 1, Ch. 532, L. 1979; amd. Sec. 1, Ch. 85, L. 1987.**

71-3-1112. Purpose. The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals when a person receiving medical treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance.

History: **En. Sec. 2, Ch. 532, L. 1979; amd. Sec. 2, Ch. 496, L. 1983; amd. Sec. 2, Ch. 85, L. 1987.**

71-3-1113. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Beneficiary" means a person entitled to insurance benefits.

(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies. The term "insurer" includes a health service corporation.

(3) "Person" means an individual, a corporation, an organization, or other legal entity. *(Terminates April 17, 1993—sec. 4, Ch. 469, L. 1991.)*

71-3-1113. *(Effective April 17, 1993)* **Definitions.** As used in this part, the following definitions apply:

(1) "Beneficiary" means a person entitled to insurance benefits.

(2) "Insurance" means a contract whereby a person, the insurer, undertakes to indemnify another, the insured, or pay or provide a determinable amount or benefit upon determinable contingencies.

(3) "Person" means an individual, a corporation, an organization, or other legal entity.

History: **En. Sec. 3, Ch. 532, L. 1979; amd. Sec. 1, Ch. 469, L. 1991.**

Compiler's Comments

1991 Amendment: In definition of insurance inserted second sentence to include a health service corporation. Amendment effective April 17, 1991.

Termination Date: Section 4, Ch. 469, L. 1991, provided: "[This act] terminates [2 years after the effective date of this act]." Effective April 17, 1991, and terminates April 17, 1993.

71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals. (1) Whenever a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

(a) any claim or cause of action the injured person, his estate, or successors may have for injury, disease, or death;

(b) any judgment the injured person, his estate, or successors may obtain for injury, disease, or death; and

(c) all money paid in satisfaction of such judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420.

History: En. Sec. 4, Ch. 532, L. 1979; amd. Sec. 3, Ch. 85, L. 1987.

71-3-1115. Notice of lien. (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital claiming a lien shall serve written notice upon the person and upon his insurer, if any, against whom liability for injury, disease, or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

History: En. Sec. 5, Ch. 532, L. 1979; amd. Sec. 4, Ch. 85, L. 1987.

71-3-1116. Notice of lien — filing with clerk of court. If an action is commenced for recovery for injury, disease, or death, a copy of the notice of lien may be filed in the office of the clerk of court in which the action is pending, and the filing is notice to all parties to the action.

History: En. Sec. 6, Ch. 532, L. 1979.

71-3-1117. Liability for failure to recognize lien. If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital for the reasonable value of the services.

History: En. Sec. 7, Ch. 532, L. 1979; amd. Sec. 5, Ch. 85, L. 1987.

71-3-1118. *(Temporary)* **Applicability.** (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance; a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital; or an annuity contract or to pension benefits payable under a qualified pension plan. *(Terminates April 17, 1993—sec. 4, Ch. 469, L. 1991.)*

71-3-1118. *(Effective April 17, 1993)* **Applicability.** (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan.

History: En. Sec. 8, Ch. 532, L. 1979; amd. Sec. 1, Ch. 496, L. 1983; amd. Sec. 6, Ch. 85, L. 1987; amd. Sec. 2, Ch. 469, L. 1991.

Compiler's Comments

1991 Amendment: In (3), near middle after "disability insurance", inserted exception clause. Amendment effective April 17, 1991.

Termination Date: Section 4, Ch. 469, L. 1991, provided: "[This act] terminates [2 years after the effective date of this act]." Effective April 17, 1991, and terminates April 17, 1993.

Cross-References

Workers' Compensation Act, Title 39, ch. 71.

Occupational Disease Act, Title 39, ch. 72.

Part 12

Agisters' Liens and Liens for Service

Part Cross-References

Bailment, Title 70, ch. 6.

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1201. Who may have lien. (1) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ranchman, farmer, agister, herder, hotelkeeper, livery, or stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock and may retain possession thereof until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, that is due to him from the owner or

lawful claimant for such service and for material, if any, furnished in connection therewith.

History: En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; R.C.M. 1947, 45-1106(part); amd. Sec. 5, Ch. 11, L. 1979.

Cross-References

Bailment, Title 70, ch. 6.

71-3-1202. Priority. (1) The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions or other recorded liens on the property involved unless, within 30 days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lienholder, stating his intention to assert a lien on said property, under the terms of this part, and stating the nature and approximate amount of the work performed or feed or other services furnished or intended to be performed or furnished therefor.

(2) Such service may be made either by personal service or by mailing by registered or certified mail a copy of said notice to the secured party or other lienholder at his last-known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office.

(3) Within 20 days after the date of such mailing or 10 days after such personal service, the secured party or other lienholder or his representative shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lienholder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this part.

History: (1), (2)En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R.C.M. 1921; Cal. Civ. C. Sec. 3051; Based on Field Civ. C. Sec. 1696; re-en. Sec. 8383, R.C.M. 1935; amd. Sec. 11-127, Ch. 264, L. 1963; Sec. 45-1106, R.C.M. 1947; (3)En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R.C.M. 1921; Cal. Civ. C. Sec. 3052; re-en. Sec. 8384, R.C.M. 1935; amd. Sec. 11-128, Ch. 264, L. 1963; Sec. 45-1107, R.C.M. 1947; R.C.M. 1947, 45-1106(part), 45-1107; amd. Sec. 1, Ch. 308, L. 1983.

Cross-References

Secured transactions — U.C.C., Title 30, ch. 9.

Rules of priority under U.C.C., Title 30, ch. 9, part 3.

Priority in general, 71-3-113.

Priority of purchase money mortgage, 71-3-114.

Priority — farm laborers' liens, 71-3-401.

Priority — construction liens, 71-3-541, 71-3-542.

Priority — loggers' liens, 71-3-602.

Priority — liens for seed or grain, 71-3-702.

Priority — threshers' liens, 71-3-804.

Priority — liens for spraying or dusting, 71-3-904.

Priority — laborers' and materialmen's liens on oil and gas wells and pipelines, 71-3-1007.

71-3-1203. Enforcement of lien — sale. If payment for such work, labor, feed, or services or material furnished is not made within 30 days after the performance or furnishing of the same, the person entitled to a lien under the provisions of this part may enforce said lien in the following manner:

(1) He shall deliver to the sheriff or a constable of the county in which the property is located an affidavit of the amount of his claim against said property, a description of the property, and the name of the owner thereof or

of the person at whose request the work, labor, or services were performed or the materials furnished.

(2) Upon receipt of such affidavit, the sheriff or constable shall proceed to advertise and sell at public auction so much of the property covered by said lien as will satisfy same.

(3) Such sale shall be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(4) Before the sheriff or constable sells the property at public auction, he shall give notice of the sale to the owner or person at whose request the work, labor, or services were performed or the materials furnished.

(a) Notice to the owner must be given at least 10 days before the sale.

(b) The notice must state:

(i) the time and place of the sale;

(ii) the amount of the claim against the property;

(iii) a description of the property;

(iv) the name of the owner or person who contracted for the services or materials; and

(v) the name of the person claiming the lien.

(c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last-known post office address of the owner or person who contracted for the services or materials.

(d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or person who contracted for the services or materials are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.

(5) The proceeds of the sale shall be applied by the sheriff to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or such part as is required to discharge the claims, shall be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against said property, and the balance of the proceeds shall be turned over to the owner of the property.

(6) However, before making seizure of any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not exceed double the amount of the claim against said property, said bond and the surety or sureties thereon to be approved by said sheriff.

History: En. Sec. 3, Ch. 117, L. 1921; re-en. Sec. 8385, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1927; re-en. Sec. 8385, R.C.M. 1935; R.C.M. 1947, 45-1108; amd. Sec. 1, Ch. 87, L. 1987; amd. Sec. 10, Ch. 88, L. 1987.

71-3-1204. Lien not lost by fraudulent taking of property. The lien created by this part shall not be lost by reason of any forcible or fraudulent taking of the property from the possession of the person entitled to said lien, but in all such cases the person entitled to such lien shall be entitled to recover possession of the property by proper action instituted in court against any person in whose possession the property may be found.

History: En. Sec. 4, Ch. 117, L. 1921; re-en. Sec. 8386, R.C.M. 1921; re-en. Sec. 8386, R.C.M. 1935; R.C.M. 1947, 45-1109.

Part 13

Liens on Real Estate

Part Cross-References
Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1301. Lien of seller of real property — waiver. (1) One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

(2) Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts and return the surplus is not a waiver of the lien.

History: (1)En. Sec. 3930, Civ. C. 1895; re-en. Sec. 5800, Rev. C. 1907; re-en. Sec. 8378, R.C.M. 1921; Cal. Civ. C. Sec. 3046; Field Civ. C. Sec. 1691; re-en. Sec. 8378, R.C.M. 1935; Sec. 45-1101, R.C.M. 1947; (2)En. Sec. 3931, Civ. C. 1895; re-en. Sec. 5801, Rev. C. 1907; re-en. Sec. 8379, R.C.M. 1921; Cal. Civ. C. Sec. 3047; Based on Field Civ. C. Sec. 1692; re-en. Sec. 8379, R.C.M. 1935; Sec. 45-1102, R.C.M. 1947; R.C.M. 1947, 45-1101, 45-1102.

71-3-1302. Purchaser's lien on real property. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

History: En. Sec. 3934, Civ. C. 1895; re-en. Sec. 5804, Rev. C. 1907; re-en. Sec. 8382, R.C.M. 1921; Cal. Civ. C. Sec. 3050; Field Civ. C. Sec. 1695; re-en. Sec. 8382, R.C.M. 1935; R.C.M. 1947, 45-1105.

71-3-1303. Extent of liens. The liens defined in 71-3-1301 and 71-3-1302 are valid against everyone claiming under the debtor, except a purchaser and encumbrancer in good faith and for value.

History: En. Sec. 3932, Civ. C. 1895; re-en. Sec. 5802, Rev. C. 1907; re-en. Sec. 8380, R.C.M. 1921; Cal. Civ. C. Sec. 3048; Field Civ. C. Sec. 1693; re-en. Sec. 8380, R.C.M. 1935; R.C.M. 1947, 45-1103.

Part 14

Hotel Liens

Part Cross-References
Bailment — innkeepers, Title 70, ch. 6, part 5.
Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1401. Lien of hotelkeepers. Hotelmen and boardinghouse and lodginghouse keepers shall have a lien upon the baggage and other property of value brought into such hotel, inn, boardinghouse, or lodginghouse by such guest or boarder or lodger for his accommodation, board, or lodging and room rent and such extras as are furnished at his request, with the right of the possession of such baggage or other property of value until all such charges are paid. Nothing herein contained shall be construed to give a lien upon property sold on the installment plan, title to which is to remain in the vendor until final payment.

History: En. Sec. 2502, Civ. C. 1895; amd. Sec. 1, p. 132, L. 1899; re-en. Sec. 5166, Rev. C. 1907; re-en. Sec. 7675, R.C.M. 1921; Cal. Civ. C. Sec. 1861; re-en. Sec. 7675, R.C.M. 1935; R.C.M. 1947, 34-103.

Cross-References

Agisters' liens and liens for service, 71-3-1201 through 71-3-1204.

71-3-1402. Enforcement of lien. Any hotelkeeper or innkeeper who shall have a lien upon any of the goods, baggage, or other chattel property of his guests may, at the expiration of 6 months from the date of the departure of such guest from such hotel or inn, sell and dispose of the same at public auction and to the highest bidder for cash or so much thereof as may be necessary to pay the sum due such hotelkeeper or innkeeper, together with the cost of storage, advertisement, and sale.

History: En. Sec. 2512, Civ. C. 1895; re-en. Sec. 5175, Rev. C. 1907; re-en. Sec. 7682, R.C.M. 1921; re-en. Sec. 7682, R.C.M. 1935; R.C.M. 1947, 34-110.

71-3-1403. Notice of sale. Before proceeding to the sale of the property of any guest, as provided in 71-3-1402, such hotelkeeper or innkeeper shall cause a notice of such sale, containing a description of the property to be sold and the time and place where such property will be sold, to be published once each week for 2 successive weeks in a newspaper published in the city or town in which such hotel or inn is situated but, if there be none, then in some newspaper published nearest such town or city and in case any balance arising from such sale shall not be claimed by the rightful owner within 30 days from the day of such sale, the same shall be paid into the treasury of the county in which such sale took place. If such balance be not claimed by the owner thereof or his legal representatives within 1 year thereafter, the same shall be paid into the school fund of such county.

History: En. Sec. 2513, Civ. C. 1895; re-en. Sec. 5176, Rev. C. 1907; re-en. Sec. 7683, R.C.M. 1921; re-en. Sec. 7683, R.C.M. 1935; R.C.M. 1947, 34-111.

Part 15

Miscellaneous Liens

Part Cross-References

Acknowledgment of lien satisfaction — penalty, 71-3-131.

71-3-1501. Lien of factor. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are entrusted to him by the same principal.

History: En. Sec. 3936, Civ. C. 1895; re-en. Sec. 5806, Rev. C. 1907; re-en. Sec. 8387, R.C.M. 1921; Cal. Civ. C. Sec. 3053; Field Civ. C. Sec. 1697; re-en. Sec. 8387, R.C.M. 1935; R.C.M. 1947, 45-1110.

Cross-References

Policy and scope of ch. 9 of the U.C.C., 30-9-102.

71-3-1502. Banker's lien. A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

History: En. Sec. 3937, Civ. C. 1895; re-en. Sec. 5807, Rev. C. 1907; re-en. Sec. 8388, R.C.M. 1921; Cal. Civ. C. Sec. 3054; Field Civ. C. Sec. 1698; re-en. Sec. 8388, R.C.M. 1935; R.C.M. 1947, 45-1111.

71-3-1503. Officer's lien. An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied or a judicial sale of the property is had.

History: En. Sec. 3940, Civ. C. 1895; re-en. Sec. 5810, Rev. C. 1907; re-en. Sec. 8391, R.C.M. 1921; Cal. Civ. C. Sec. 3057; Field Civ. C. Sec. 1701; re-en. Sec. 8391, R.C.M. 1935; R.C.M. 1947, 45-1114.

71-3-1504. Judgment lien. The lien of a judgment is regulated by Title 25.

History: En. Sec. 3941, Civ. C. 1895; re-en. Sec. 5811, Rev. C. 1907; re-en. Sec. 8392, R.C.M. 1921; Cal. Civ. C. Sec. 3058; Field Civ. C. Sec. 1703; re-en. Sec. 8392, R.C.M. 1935; R.C.M. 1947, 45-1115.

Cross-References

Judgment liens, 25-9-301.

71-3-1505. Lien for rental on frozen food compartments. A person who operates a frozen food plant which offers individual compartments to the public has a lien on the property in his possession for rentals or other charges due. Liens may be foreclosed in the same way provided for chattel mortgages.

History: En. Sec. 13, Ch. 17, L. 1967; R.C.M. 1947, 27-623.

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